

## General Terms and Conditions of Sale

These General Terms and Conditions of Sale apply to the sale of any products or goods by Zimmer Group, Inc., or any of its affiliates (referred to herein as the “Seller,” “we,” or “us”), and any such sale is expressly conditioned on the acceptance by the entity procuring the products or goods from Seller (referred to herein as the “Ordering Party”) of these Terms and Conditions of Sale (“Terms”). The Ordering Party and Seller shall each be referred to as a “Party” and collectively as the “Parties”.

### § 1: Application Area, Validity of These Conditions, Written Form

1. These Terms, together with Seller’s written confirmation of an order (“Order Confirmation”) and any separate agreement (such as any supplementary conditions and annexes) executed by the Parties constitute the entire agreement (“Agreement”) between Seller and the Ordering Party with respect to the supply of products or goods (“Products”) by Seller. No additional or conflicting terms and conditions proposed by the Ordering Party, including in any purchase order (“Order”), shall apply and are expressly excluded by Seller. Except as set forth herein, these Terms shall be the exclusive terms and conditions applicable to any such Order or sale. These Terms shall not be modified in any way except by a writing signed by a duly authorized representative of the Ordering Party and Seller.
2. All deliveries, services, and products from Seller are, insofar as the specific contracts listed in § 1 No. 5 are not present, provided solely on the basis of these Terms. We hereby expressly reject any references or counter confirmations from the Ordering Party asserting its own terms and conditions of business or purchase. We do not acknowledge any such terms and conditions of business or purchase deviating from our General Terms and Conditions, unless we have expressly agreed to their validity in writing. Our General Terms and Conditions shall apply even if we knowingly and without reservation fulfill conditions of the Ordering Party that deviate from our Terms and Conditions.
3. These Terms shall also apply for all future transactions with the Ordering Party even without subsequent express agreement.
4. In the event of contracts in the area of general systems business or contracts focusing on assembly, commissioning, repairs, maintenance or other services, the “General Terms and Conditions for Deliveries in the General System Business” and the “General Terms and Conditions for Assembly, Commissioning, Repair, Maintenance and Other Services” shall take precedence over these Terms in the event of any conflict therewith.

### § 2: Offers and Acceptance

Seller’s offers and quotations are non-binding and subject to reasonable technical and other changes. If an Order is placed for specified Products, the offer including these Terms is deemed to be binding and accepted by the Ordering Party. Likewise, the Agreement is deemed to be binding and accepted by the Ordering Party if the Ordering Party accepts delivery or makes payment for the Products. The Agreement is not deemed to be concluded until such time as the Seller sends a written Order Confirmation. No Order which has been accepted by Seller may be cancelled, modified, or suspended except upon the prior written agreement of Seller or as otherwise set forth herein.

### § 3: Properties of Products, Design Changes and Documentation Requirement

1. The characteristics of the objects we deliver that are listed in the catalogs, brochures, price lists or are otherwise accessible do not entail any specification of properties unless the specifications are expressly agreed upon between us and the Ordering Party. Seller is not obligated to maintain adherence to voluntary standards outside the ISO 9001 certification unless expressly agreed in writing by the Parties.

2. We reserve the right to make changes to any Product in design or form that are related to improvement in technology or required by law during the delivery period, so long as this does not substantially alter the Product and the changes are reasonable for the Ordering Party. However, we are not required to also make such changes to previously delivered Products.

#### **§ 4: Quotation Documents, Data and Information; Confidentiality**

1. We retain all property rights and copyrights for all content provided to the Ordering Party, including documents, data carriers, figures, drawings, patterns, costings, cost estimates, documentation and other documents produced by us as well as similar information in a tangible or intangible form (even in electronic form). They must not be used for purposes other than those stipulated in the Agreement and must not be made accessible to third parties without our prior permission being granted in writing. This applies in particular to all documents, data, figures, drawings and other information that we have designated as confidential.
2. The Ordering Party shall bear sole responsibility for the correctness of the documents and data, figures, drawings, templates, documentation and other information that the Ordering Party has provided to us.
3. If the Ordering Party provides Seller with samples, drawings, etc., it is the sole responsibility of the Ordering Party that such samples, drawings, etc. do not infringe any third party intellectual property rights. The Ordering Party shall indemnify, defend, and hold Seller harmless against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by Seller in connection with any claim or action regarding an infringement of third-party intellectual property rights by the samples, drawings, etc., provided by the Ordering Party. Projects, drawings, sketches, printing proofs, etc., as well as other property of the Ordering Party are stored with Seller at the risk of the Ordering Party. The obligation to store the materials mentioned above ends one year after their latest use. If requested by Seller, the Ordering Party will remove or dispose of the materials after said year at its own expense. If this does not occur within fourteen (14) business days, Seller has the right to dispose of the materials at the expense of the Ordering Party.
4. In connection with the performance of an Order, the Ordering Party may acquire certain information from Seller that is proprietary and confidential. Any such information which is not otherwise in the public domain or independently developed by the Ordering Party shall not be disclosed to any third party without Seller's prior written consent.

#### **§ 5: Prices; Price Changes and Adjustments**

1. Insofar as no other agreement has been made, our prices apply "ex works" and include no costs for transport, packaging, postage, insurance, statutory taxes, customs, or other fees. We shall invoice the Ordering Party for the additional costs for packaging and transport as well as for postage and – to the extent agreed upon – for insurance at the cost price. This also applies to any agreed-upon partial deliveries and express deliveries. If any installation or assembly work is required, this shall also be invoiced separately. Any applicable taxes incurred at the amount legally applicable on the day of delivery/invoicing shall be added to this.
2. The Ordering Party shall bear the costs for any duties and customs clearance charges incurred for shipments abroad.
3. The prices specified in our catalogs and other sales documents apply to the time of the respective publication of the sales documents. The condition is similar for prices on our websites. In the case of these, the prices refer to the time at which we posted them on the Internet. Unless expressly included in the content of the Agreement, they shall be non-binding. For this reason, we reserve the right to make price changes between publication of sales documents or information on the Internet and the conclusion of the Agreement.
4. The prices specified in our quotation or at the conclusion of the Agreement are based on our costing at the time of submitting the quotation or concluding the Agreement. We reserve the right – even after concluding the Agreement – to change prices if more than four (4) months lie between the

conclusion of the Agreement and an agreed-upon delivery date. If a substantial change to our costing arises in such a period due to increased costs, for example, due to increased costs for materials or energy, taxes, or wages of our employees, and the resulting price increase of at least ten percent (10%) for Products, we retain the right to increase our prices within the scope of the altered circumstances and without adding any additional profit. This shall not apply if we are in default with our delivery. We shall be obligated to proceed in the same manner and to the same extent – for an agreed-upon delivery date of more than four (4) months – in the event of decreased costs. Upon request of the Ordering Party, we shall verify both increases and decreases in costs for the Ordering Party as soon as and to the extent they are incurred.

5. The minimum order value is Twenty-Five and No/100 Dollars (\$25.00).

#### **§ 6: Terms of Payment; Default, Inability to Pay, Indications of Financial Collapse of the Ordering Party**

1. Unless otherwise agreed, our invoices shall be due within fourteen (14) days from the invoice date and payable in full within this period. Payment is to be made to our paying office. The Ordering Party is responsible for ensuring delivery of payment.
2. Deduction of a cash discount is permitted only with a special agreement with us in writing.
3. Payment shall not be regarded as having been made until the funds are available for our use. We shall accept checks only with an express agreement and always only on account of performance. In the case of checks, payment shall not be regarded as having been made until the check is redeemed. We shall not accept bills of exchange. All payments shall be made without deduction, deferment, set-off, lien or counterclaim of any nature.
4. All amounts due not paid within fourteen (14) days after the date such amounts are due and payable shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate of interest allowed by law, whichever is greater. If Seller must place a claim for amounts past due from the Ordering Party with an attorney for collection, the Ordering Party will be liable for the reasonable attorneys' fees and costs incurred by Seller thereby.
5. We reserve the right to deliver to new customers only after prepayment or for cash on delivery.
6. Insofar as the Ordering Party has defaulted on payment – also with respect to prior deliveries – or we become aware of circumstances that give us reason to doubt the Ordering Party's ability to pay or creditworthiness and through which our payment claims for the service we are due in return appear to be jeopardized, particularly if the Ordering Party ceases making payments or opens or applies for insolvency proceedings over its assets or a comparable proceeding for settlement of debts, we shall be entitled to demand immediate payment of all outstanding claims from all business relationships with the Ordering Party, even insofar as we have accepted checks. In these cases we shall also be entitled to demand prepayment or security deposits.
7. For outstanding claims against the Ordering Party from prior business relationships, we shall be entitled – despite different payment provisions of the Ordering Party – to credit payments first to the respectively oldest debt that is due. If costs and interest have already been incurred, we shall be entitled – despite different payment provisions of the Ordering Party – to credit the Ordering Party's payments first to the costs, then to the interest and finally to the main outstanding claim. In the aforementioned cases we shall notify the Ordering Party about the kind of crediting done.

#### **§ 7: Offset; Rights of Retention; Assignations**

1. The Ordering Party shall have offset rights only if its counterclaims are established in a legally binding manner, undisputed or recognized by us. Rights of retention shall be excluded insofar as they are not based on the same contractual relationship. Furthermore, the Ordering Party shall be entitled to exercise a right of retention only with respect to counterclaims that are established in a legally binding manner, uncontested or recognized by us, and that are based on the same contractual relationship.
2. To the fullest extent permitted by applicable law, assignment of claims against Seller is not permitted.

3. The Agreement shall be binding upon each Party's successors in interest and permitted assignees. Any assignment of rights or transfer of obligations from the Ordering Party to a third party shall require the prior written consent of Seller. Notwithstanding the foregoing, the consent of the other Party shall not be required for a Party to assign its rights or transfer its obligations under this Agreement to an affiliated company or to a third party that acquires all or substantially all of the assets of the Party or controlling interest in the equity of the Party. Such assignment or transfer becomes valid upon written (including without limitation facsimile or email transmission) notification to the other Party. The Ordering Party, however, explicitly accepts an assignment or transfer of rights and/or receivables against it from Seller for purposes of refinancing. Seller is therefore entitled to assign its receivables against the Ordering Party for purposes of refinancing.

#### **§ 8: Delivery Time; Obligation of the Ordering Party to Compensate for Damages from Delivery Delays for Which the Ordering Party is Responsible; Partial Deliveries**

1. The delivery time shall be determined by the agreements made between us and the Ordering Party. Our adherence to it presupposes timely and unambiguous clarification of all commercial and technical questions with the Ordering Party; it also presupposes that the Ordering Party has met all obligations incumbent upon it in a timely and proper manner. This includes, for example, producing the information and documents to be procured by the Ordering Party, namely, any required regulatory certificates or approvals, as well as rendering any agreed-upon prepayment or down payment. Otherwise, the delivery time will be appropriately extended, unless we are responsible for the delivery delay.
2. In the event of later modifications to the Agreement by the Parties that can influence the delivery date, the delivery time will be appropriately extended, insofar as special agreements are not made.
3. The delivery time shall be deemed to have been met if, by the time it expires, the Product has left our plant or warehouse or the Ordering Party has been notified of our readiness to ship the Product. Insofar as acceptance must take place – except in the case of an authorized refusal of acceptance – the acceptance date is authoritative; alternatively, notification of willingness to accept is authoritative. If delivery is made early, this early time shall be authoritative rather than the originally agreed-upon time.
4. If sending of the Product is delayed for a reason for which the Ordering Party is responsible, we are entitled to set an appropriate deadline for the Ordering Party and to withdraw from the Agreement after the period expires unsuccessfully and to demand compensation for damages due to non-fulfillment. In this case, we are entitled – notwithstanding the option of claiming higher damages – to demand five percent (5%) of the agreed-upon Agreement price for the costs that have arisen through processing the order and for lost profits. The Ordering Party reserves the right to prove that we have incurred no damages or less damages.
5. We are entitled to partial deliveries so long as the remaining delivery portions have been delivered within an agreed-upon delivery time and this is not unreasonable to the Ordering Party.

#### **§ 9: Force Majeure; Self-supply**

1. We shall not be responsible for delays in delivery and service – even in the case of binding deadlines that have been agreed upon – due to force majeure as well as extraordinary events we could neither foresee nor prevent despite our reasonable care in accordance with the circumstances of the event, and events that temporarily make it considerably difficult or even impossible for us to provide the delivery or service. Here we list the following as examples of these kinds of events: Significant interruptions of operations, measures taken as part of labor disputes, in particular strikes and lockouts, energy supply difficulties, shortage of raw materials or delay in the delivery of essential raw and building materials, intervention by authorities, in particular government or supranational export control provisions, delivery embargoes or other sanctions, mobilization, war, rebellion, etc. The above shall also apply if the aforementioned events occur for our suppliers or their sub-suppliers. Hindrances such as the aforementioned shall entitle us to postpone the delivery or service for the duration of the hindrance plus an appropriate lead time. If the hindrance lasts longer than

- three (3) months, we shall be entitled to withdraw from the Agreement entirely or in part due to the part that has not been fulfilled.
2. If the hindrance in the cases specified under § 9 No. 1 lasts longer than three (3) months, the Ordering Party is likewise entitled – after an appropriate deadline extension – to withdraw from the Agreement with respect to the part of the Agreement not yet fulfilled.
  3. If, in the cases specified under § 9 No. 1, the delivery time is extended or we are released – in whole or in part – from our contractual obligation to provide service in accordance with § 9 Nos. 1 and 2, the Ordering Party is not allowed to make any claims against us for damages.

#### **§ 10: Shipping; Shipping and Transport Costs; Transfer of Risk; Insurance**

1. Our Products are always shipped and transported uninsured and at the expense of the Ordering Party. Insofar as the Ordering Party does not desire any special shipping method, we will choose the one that appears to us to be least expensive.
2. The Ordering Party shall bear the risk of accidental loss or accidental deterioration of the Products as soon as we have handed them over to the person carrying out the transport, but no later than when the Products leave our factory or warehouse for the purpose of being shipped. This shall apply regardless of whether the shipment is made from the place of performance and of who bears the shipping/transport costs. The above shall also apply in the case that shipment takes place using our company-owned vehicles or our own personnel. The above shall also apply in the case of partial deliveries and if we have also taken over other services, e.g. the shipping/transport costs or the delivery and installation of the Products. Insofar as acceptance must take place, this is authoritative for the transfer of risk. It must be carried out by us immediately on the acceptance date or, alternatively, after the report of the willingness to accept. The Ordering Party may not refuse acceptance due to the presence of a non-significant defect. All material agreements concerning the payment of transport costs shall be deemed to be mere expense clauses that do not affect the passing of risk.
3. If a Product is ready for shipping or acceptance and notification of willingness to ship and/or accept is given to the Ordering Party and if shipment or acceptance is delayed for reasons for which we are not responsible, the risk of accidental loss or accidental deterioration of the Products is transferred to the Ordering Party upon being notified of the willingness to ship and/or accept.
4. At the wish of the Ordering Party, at the Ordering Party's own cost, we can insure the shipment against transport, fire, and water damage as well as breakage, theft, pilferage, and other insurable risks.

#### **§ 11: Warranty**

1. Seller hereby warrants that new Products will be free from defects in material and workmanship under normal use and service for the duration of the Warranty Period. As used herein, the "Warranty Period" means a period of twelve (12) months from the date of delivery. The Ordering Party's sole and exclusive remedy for breach of these warranties is the repair or replacement of any defective Products or, at Seller's option, return thereof and refund of the purchase price reduced as appropriate to reflect commercial usage by the Ordering Party. The Ordering Party must provide Seller with written notice identifying and describing the defective Products during the Warranty Period. The Ordering Party shall be responsible for the return delivery of the defective Products to Seller except when Seller determines, in Seller's sole discretion, that such delivery is impracticable. The above warranties are wholly inapplicable to and exclude any defect, damage, or malfunction resulting from any other cause outside Seller's reasonable control (e.g., modifications). Replaced parts are property of Seller and must be returned to us.
2. **THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.**

3. The Ordering Party shall give us the necessary time and opportunity to carry out all measures we deem necessary for rectification as defined by § 11 No. 1; otherwise, we shall be released from liability for the consequences resulting therefrom. Only in urgent cases that endanger operational safety and for the purpose of defending against disproportionately large damages, the Ordering Party shall have the right to remove defects independently or have them removed by a third party and to demand from us reimbursement of the necessarily resulting expenses. In the last cases mentioned, the Ordering Party must notify us immediately.
4. If we allow an appropriate deadline for rectification set by the Ordering Party to pass without action, the Ordering Party shall have a right to, at its option, withdraw from the Agreement or demand a reduction (decrease) of the contractually agreed price. Furthermore, Ordering Party shall be entitled to withdraw from the Agreement or demand a decrease of the contractual price if rectification fails, is unreasonable for the Ordering Party or is delayed for an unreasonable length of time for a reason for which we are responsible. The same shall apply if we earnestly and finally refuse rectification or are incapable of rectification, as well as if special circumstances exist that justify immediate withdrawal considering the interests of both Parties. However, in case of only minor infringement of the Agreement, particularly for only minor defects, the Ordering Party shall have only the right of decrease.
5. Any further claims of the Ordering Party, to the extent permitted hereunder, shall be based exclusively on § 12 of these Terms.
6. For remedial work and replacement shipments as defined by § 11 No. 1, we shall be liable to the same extent as for the original Product.
7. We shall not be liable:
  - for damages caused by improper or unsuitable use of the Products, particularly due to overuse or excessive strain, incorrect or negligent handling, improper maintenance, incorrect installation or commissioning of the objects of delivery by the Ordering Party or third parties, use of unsuitable operating materials, use of consumables that do not conform to the original specifications, faulty construction work, an unsuitable foundation, the effects of chemical, electrochemical or electrical factors – unless the circumstances of the aforementioned nature are our responsibility;
  - if statutory directives or directives issued by us with regard to installation, operation, maintenance and cleaning are not complied with by the Ordering Party or third parties, such as the Ordering Party's own end customers, unless the respective defect in question is not the result of such failure to comply;
  - for the consequences of improper remedial work by the Ordering Party or a third party commissioned by the Ordering Party, or if the Ordering Party or a third party commissioned by the Ordering Party has made changes to the delivery objects or replaced parts without our consent - unless the respective defect in question is not the result thereof;
  - if the Product has been produced or modified based on specifications provided by the Ordering Party, particularly based on drawings it has provided and the defect in the Product is attributable to these specifications/drawings or for the solution to a design task specified by the Ordering Party which, at the time of its implementation, was the state of the art;
  - for natural wear and tear of the Products; or
  - for whether the Products comply with standards or regulations of other countries, unless we provided specific assurance of such.
8. If the Ordering Party has made a claim against us in relation to alleged defect rights and it transpires that either there is no defect or the claimed defect is due to circumstances for which we are not liable, particularly if one of the cases listed above under § 11 No. 7 applies, the Ordering Party shall be obligated to reimburse us for all costs incurred in conjunction with examining the defect claim and/or rectification, unless we invoke this without justification and the Ordering Party is not responsible for this.

## § 12: Limitation of Liability

1. In no event shall Seller's aggregate liability for any loss or damage arising out of or in connection with an order or from the performance or breach thereof exceed the price paid by the Ordering Party for the Products that are the subject of such claim(s), and the Ordering Party hereby expressly waives and releases any claims against Seller in excess of such price. This limitation does not apply to claims for personal injury.
2. Except as expressly set forth herein, in no event shall either Party be liable for any loss of profits, loss of savings, or revenue, or for indirect, special, punitive, incidental, or consequential damages whatsoever based upon breach of warranty, breach of contract, negligence, strict tort, or any other legal theory. This limitation does not apply to claims for personal injury.
3. The remedies available and set forth herein are the sole and exclusive remedies available to the Parties for a breach of these terms and conditions and of the Agreement between the Parties and are in lieu of all other remedies available at law or in equity.
4. Insofar as Seller is excluded from liability, the same exclusion shall apply to the personal liability of its staff, employees, colleagues, legal representatives and agents.
5. The statutory provisions for burden of proof are not affected by the above provisions.

## § 13: Statute of Limitations

1. Unless other provisions are made below, the statute of limitations period for claims of the Ordering Party arising from material and legal defects shall be one (1) year in accordance with the *Limitations Act, 2002* (Ontario) (the "Act"). This Agreement is made for business purposes and is a "business agreement" as defined in the Act and any amendments thereto, and no limitation period in the Act, other than the ultimate limitation period of the Act, shall apply to this Agreement and to the obligations imposed by this Agreement. The statute of limitations period begins with delivery of the Products. This period also applies to contractual and non-contractual claims for compensation for damages based on a defect.
2. To the extent a claim is otherwise permitted pursuant to applicable law, these Terms, and the Agreement, the statutory limitation period applies:
  - to defects of a structure and defects of Products that were used for a structure according to their usual type of use and have caused its defectiveness;
  - for claims arising from impermissible actions based on a defect of the Products;
  - insofar as we are liable for damages arising from injuries to life, body, or health;
  - insofar as we are liable for damages due to intentional actions or gross negligence;
  - insofar as our liability is based on the fact that we have assumed a warranty for the quality of the Products or the procurement risk or we are liable due to malicious action;
  - for claims in rem of third parties; or
  - for claims in delivery recourse.
3. Any statement made by us concerning a defect claim asserted by the Ordering Party shall not be construed as entering into negotiations about the claim or the circumstances on which the claim is based insofar as we refute the entire scope of the defect claim.

## § 14: Retention of Title

1. Title to the Products shall not pass until the full purchase price, as well as all ancillary costs, have been paid in full. Until payment in full of the price therefor, the Ordering Party hereby grants to Seller a purchase money security interest in such Products (referred to herein as the "Retained Title Products"), proceeds, and accessories thereof, to secure payment of such price and for the payment and performance of any and all indebtedness, obligations and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Debtor to the Seller or remaining unpaid by the Debtor to the Seller wheresoever and incurred in relation to the Retained Title Products evidenced hereby and all interest, commissions, cost of realization, legal and other costs, charges, and expenses the Debtor, for good and valuable consideration (the receipt of and

sufficiency of which is hereby acknowledged), and authorizes the Seller to register a purchase money security interest pursuant to the provisions of the *Personal Property Security Act* (Ontario) (the "PPSA") by way of a PPSA statement to ensure the Seller's interest in the Retained Title Products in Ontario. The Ordering Party will not encumber the Retained Title Products with any mortgage, lien, pledge, or other attachment prior to payment in full of the price therefor. The Debtor and the Seller agree that they intend the security interest hereby granted to attach upon the execution of this Agreement. The Debtor hereby acknowledges that value has been given.

2. The inclusion of individual claims in an open account and the establishment and recognition of balances shall not affect this reservation of title.
3. Payment shall be deemed to have been made only when we receive the equivalent value.
4. The Ordering Party is obligated to handle the Retained Title Products with care for as long as title is retained by Seller. Insofar as maintenance and inspection work is required on any Retained Title Product, the Ordering Party must carry these out in a timely manner and at its own expense.
5. The Ordering Party is obligated to adequately insure, at its expense, the Retained Title Products against damage by fire, water, breakage, and theft. The Ordering Party immediately assigns its claims to compensation for damages to which it is entitled from the insurance company based on a corresponding insurance policy to Seller. If the assignment is not permissible, the Ordering Party shall hereby instruct the insurance company to make any and all payments to Seller only. This is without prejudice to any other claims of Seller. Upon our request, the Ordering Party must provide us with proof of having taken out the insurance policies mentioned above. We shall be entitled to ourselves insure, at the Ordering Party's expense, the Retained Title Products against damage by fire, water, breakage and theft (including break-ins and armed robbery) insofar as the Ordering Party does not provide proof of a corresponding insurance policy upon being prompted to do so.
6. Ordering Party shall be entitled to sell the Retained Title Products as part of the normal course of business. However, pledging the Retained Title Products as collateral, assigning, or ceding them as security shall not be permitted without our consent.
7. The Ordering Party is obligated to secure the rights of Seller when reselling the Retained Title Products.
8. The Ordering Party shall now and hereby cede to us all claims resulting from the resale of the Retained Title Products to its own end customers or third parties in the sum of the final invoice amount (including sales tax), regardless of whether the Products or Retained Title Products are sold with or without further processing. In the event that the Ordering Party and its end customers have a current account relationship, the advance assignment of accounts receivable shall also refer to the acknowledged balance and, in the event of the bankruptcy of the end customer, to the "causal" balance that then exists. Seller hereby accepts this cession. If the assignment is not permissible, the Ordering Party shall hereby instruct its own end customers to make any and all payments to Seller only. The Ordering Party is granted a revocable power of attorney to collect the receivables assigned to Seller in its own name as a fiduciary acting on our behalf. The collected amounts shall be remitted to us immediately. Our authority to demand payment for the receivables ourselves shall remain unaffected by this; however, we pledge to the Ordering Party not to demand payment for the receivables as long as the Ordering Party duly fulfills its payment obligations, does not default in payments, does not open or apply for insolvency proceedings over its assets or a comparable proceeding for settlement of debts and we do not become aware of circumstances that give us reason to doubt the Ordering Party's ability to pay or creditworthiness and through which our payment claims for the service we are due in return appear to be jeopardized.
9. The Ordering Party shall undertake any modification or processing of the Retained Title Products on our behalf without any obligation arising on our part from this. If the Retained Title Products are processed, mixed, or combined with goods that do not belong to us, we shall be granted co-ownership in the newly created products in the ratio of the invoiced value of the processed goods (final invoice value including sales tax) proportional to the invoice value of the processed, mixed, or combined goods at the time of the processing, mixture, or combination. If the buyer acquires sole ownership of the new product, the Parties are in agreement hereby that the buyer grants us co-ownership of the new product in a proportion of the value of our processed, combined, or intermixed goods subject to retention of title (final net invoiced amount including any applicable taxes) to the other processed, combined, or intermixed objects and shall store the product for us without charge.



10. If the Retained Title Products are resold along with other items, regardless of whether they are resold without or after processing, mixture or combination, then the assignment in advance agreed upon above is valid only for the amount of the invoice value of our goods subject to retention of title (final net invoiced amount including any applicable taxes) that are resold together with the other items.
11. To secure our receivables as expressed above, the Ordering Party shall also assign to us receivables that accrue to the Ordering Party from a third party due to the combination of the Retained Title Products with a property.
12. In the case of a blanket assignment by the Ordering Party, the claims assigned to us as defined by § 14 Nos. 8-11, inclusive, are to be expressly removed.
13. If the Ordering Party violates the Agreement, particularly by delaying or ceasing payments, refusing to pay checks, applying for insolvency proceedings over its assets or for a comparable proceeding for settlement of debts, the authorization of the Ordering Party to dispose of Retained Title Products and to collect assigned claims shall lapse. The same shall apply if we become aware of other circumstances that give us reason to doubt the Ordering Party's ability to pay and through which our payment claims for the service we are due in return appear to be jeopardized.
14. In the cases specified under the foregoing § 14 No. 13, after having given a reminder and simultaneously set an appropriate extended deadline for payment of the Agreement price of the Agreement, we shall be authorized to repossess the Retained Title Products after the extended deadline has passed without action. However, if the Ordering Party has applied for insolvency proceedings over its assets, we are also authorized to withdraw from the Agreement immediately and to demand the immediate return of the Retained Title Products. In the event that we demand a return, the Ordering Party shall be obligated to give us the Retained Title Products without delay. Our acceptance of the returned Retained Title Products constitutes a withdrawal from the Agreement. After taking possession of the Retained Title Products, we shall be entitled to make use of them. The proceeds from such usage shall, minus reasonable usage costs, be credited to the Ordering Party's obligations.
15. In the cases specified under the foregoing § 14 No. 13, we have the right to demand that the Ordering Party notify us of the assigned claims and their Ordering Partys. Upon our request, the Ordering Party must provide us with the information required for collecting the assigned claims, submit the associated documents to us and inform the (third-party) Ordering Partys of the assignment. In this case, the Ordering Party is particularly obligated to provide us with the names and addresses of the (third-party) Ordering Partys as well as the amount of the claims along with the date of the invoicing. Furthermore, we shall also be entitled to notify the (third-party) Ordering Partys of the assignment ourselves.
16. Upon request of the Ordering Party, we shall undertake to release the securities to which we are entitled in accordance with the aforementioned provisions, insofar as the realizable value of the securities exceeds our receivables to be secured from the business relationship with the Ordering Party by ten percent (10%) or more, insofar as these have not yet been paid. We reserve the right to choose which securities to release.
17. For deliveries to locations governed by different law, where this provision concerning retention of title does not provide the same security, the Ordering Party shall hereby grant us a corresponding security interest. Insofar as further measures are required for this, the Ordering Party shall undertake all necessary measures to grant Seller such a security interest without delay. The Ordering Party will participate in all measures that are required and conducive to the effectiveness and enforceability of such security interests.

## **§ 15: Software Use**

Insofar as software is included in the scope of delivery, the Ordering Party is granted a non-exclusive right to use this software including its documentation. The software is transferred exclusively for use on the Product intended for this. This right is non-transferable. The Ordering Party is not permitted to grant use rights to third parties. Any use of the software on more than one system is prohibited. The Ordering Party may reproduce, revise, translate or convert the object code into the source code only to the extent expressly

permitted by applicable law. The Ordering Party undertakes not to remove existing manufacturer information, particularly copyright or registration marks, such as registration numbers in the software, or to modify it without our express, prior approval. The other rights to the software and the documentation, including copies, remain vested in us as seller or in the software provider.

#### **§ 16: Applicable Law; Language of the Agreement; Place of Jurisdiction; Place of Fulfillment**

1. The Agreement and any Order placed thereunder shall be governed by and construed solely and exclusively in accordance with the laws of Ontario, Canada, and all claims relating to or arising out of this Agreement and the Order, or the breach thereof, whether sounding in contract, tort, or otherwise, shall likewise be governed by the laws of Ontario. The Parties agree that any dispute, claim, or action relating to or arising from this Agreement or an Order shall be brought only in the provincial or federal courts sitting in Ontario, Canada. The Ordering Party waives all defenses of lack of personal jurisdiction and forum non conveniens. Application of the United Nation's Convention on the International Sale of Goods is excluded.
2. The place of fulfillment of all mutual obligations arising from the contractual relationship shall be the official location of business of Seller in Hickory, North Carolina.
3. Notwithstanding the foregoing, we reserve the right also to choose to file an action in any jurisdiction where the registered office of the Ordering Party is located, or in any other permitted court of competent jurisdiction, to the extent deemed we deem necessary in our sole and absolute discretion.

#### **§ 17: Partial Nullity**

If a provision in these Terms or a provision in other agreements between us and the Ordering Party shall at any time be deemed either entirely or partially invalid or unfeasible, or if these Terms should contain any gap, the validity of all other provisions and/or agreements shall not be affected. The effective or feasible provision most closely approaching the purpose of the ineffective or unfeasible provision shall apply in its place as agreed upon. In the case of a gap, the provision corresponding to what would have been agreed upon in accordance with the purpose of these Terms, insofar as the Parties would have taken the matter in question into account from the outset, shall apply.

#### **§ 18: Merger, Modification, and Waiver**

The Agreement constitutes the entire Agreement between the Parties, there being no warranties, representations, or conditions of any kind or nature between the Parties except as set forth therein. The Agreement - including this clause - cannot be modified, changed, waived, substituted, or discharged orally, except by a writing signed by the Party against whom enforcement of the change, modification, waiver, substitution, or discharge is sought. No waiver by either Party, whether express or implied, of any provision of the Agreement or any breach of default of either Party shall constitute a continuing waiver of such provision or a waiver or any other provision of provisions of the Agreement, and no such waiver by either Party shall prevent such Party from enforcing any and all provisions of the Agreement, or from acting upon any subsequent breach of default of the other Party, under any provisions of this Agreement.