Sale of Goods Agreement

This Sale of Goods Agreement, dated as of {d.date} (this "**Agreement**"), is entered into between {d.sellerName}, a {d.stateOfOrganisationSeller} {d.typeOfEntitySeller} ("**Seller**") and {d.buyerName}, a {d.stateOfOrganisationBuyer} {d.typeOfEntityBuyer} ("**Buyer,**" and together with Seller, the "**Parties,**" and each, a "**Party**").

**WHEREAS**, Seller is in the business of selling {d.descriptionOfGoods};

**WHEREAS**, Buyer is in the business of {d.descriptionOfBusiness}; and

**WHEREAS**, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the Goods.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Sale of Goods. Seller shall sell to Buyer and Buyer shall purchase from Seller the goods set forth in the attached Exhibit A (the "**Goods**") in the quantities and at the Prices (as defined in Section 7) and upon the terms and conditions set forth in this Agreement.
2. Delivery.
   1. The goods will be delivered within a reasonable time after the date of this Agreement, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit.
   2. Seller shall deliver the Goods to {d.sellerLocation} (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within {d.number} days of Seller's written notice that the Goods have been delivered to the Delivery Point. All Prices are [[EXW/OTHER INCOTERMS® RULE] Delivery Point, Incoterms® [YEAR OF APPLICABLE INCOTERMS® RULE]/[OTHER SHIPPING TERMS]].
   3. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the quantity purchased under this Agreement.
   4. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses, or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
3. Non-Delivery. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.
4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to 90% more or less than the quantity set forth in the attached Exhibit A, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the Price set forth in this Agreement adjusted pro rata.
5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase Price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Illinois Uniform Commercial Code.
6. Inspection and Rejection of Nonconforming Goods.
   1. Buyer shall inspect the Goods upon receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in this Agreement; or (ii) product's label or packaging incorrectly identifies its contents.
   2. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods at the pro rata contract rate. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at [LOCATION]. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
   3. Buyer acknowledges and agrees that the remedies set forth in Section 6(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 6(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
7. Price. Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in the attached Exhibit A. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then this Agreement shall be construed as if the increased Prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Prices. All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property, or other assets.
8. Payment Terms. Buyer shall pay all invoiced amounts due to Seller [on receipt/within {d.number} days from the date] of Seller's invoice. Buyer shall make all payments hereunder by [wire transfer/check/{d.otherPaymentMethod}] and in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of {d.otheroneAndhalfNumber}% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
9. No Setoff. Buyer shall not, and acknowledges that it will have no right, under this Agreement, any other agreement, document, or law, to withhold, offset, recoup, or debit any amounts owed (or to become due and owing ) to Seller or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or its affiliates, whether relating to Seller's or its affiliates' breach or non-performance of this Agreement or any other agreement between Buyer or any of its affiliates, and Seller or any of its affiliates, or otherwise.
10. Warranties.
    1. Seller warrants to Buyer that for a period of {d.number} [month[s]/years[s]] from the date of shipment of the Goods [("**Warranty Period**")], such Goods will conform to Seller's published specifications in effect as of the date of this Agreement and will be free from defects in material and workmanship.
    2. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; [OR] (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; [OR (iii) WARRANTY OF TITLE;] [OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY;] WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
    3. [Products manufactured by a third party ("**Third-Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by the warranty in Section 10(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**]
    4. [The Seller shall not be liable for a breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within [NUMBER] days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.]
    5. [The Seller shall not be liable for a breach of the warranty set forth in Section 10(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.]
    6. [Subject to Section 10(d) and Section 10(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part(s)) or (ii) credit or refund the Price of such Goods at the pro rata contract rate, provided that if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.]
    7. **[THE REMEDIES SET FORTH IN SECTION 10(f) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(a).]**
11. Limitation of Liability.
    1. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (iv) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
    2. **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED [{d.number}TIMES] THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER [or $[AMOUNT], WHICHEVER IS LESS].**
12. Compliance with Law. Buyer is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Buyer has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.
13. Indemnification. Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, managers, shareholders, members, partners, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, awarded against Indemnified Party in a final non-appealable judgment, arising out of or resulting from any claim of a third party or Seller arising out of or occurring in connection with the products purchased from Seller or Buyer's negligence, willful misconduct, or breach of this Agreement. Buyer shall not enter into any settlement without Seller's or Indemnified Party's prior written consent.
14. Insurance. During the term of this Agreement [and for a period of [TIME PERIOD] thereafter], Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability in a sum no less than $[AMOUNT] [ADD OTHER INSURANCE COVERAGES AND RESPECTIVE AMOUNTS, AS APPLICABLE] with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with [NUMBER] days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.
15. Termination. In addition to any remedies that may be provided in this Agreement, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
16. Confidential Information. All non-public, confidential, or proprietary information of Seller, including, but not limited to, trade secrets, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Buyer at the time of disclosure; or (c) rightfully obtained by the Buyer on a non-confidential basis from a third party.
17. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.
18. Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement. [With respect to confidential information that constitutes a trade secret under applicable law, the rights and obligations set forth in Section 16 hereof will survive the expiration or earlier termination of this Agreement until, if ever, such confidential information loses its trade secret protection other than due to an act or omission of Buyer.]
19. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

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| Notice to Seller: | {d.sellerAddress} |
|  | Attention: {d.titleOf OfficerToReceiveNoticeSeller} |
| Notice to Buyer: | {d.buyerAddress} |
|  | Attention: {d.titleOf OfficerToReceiveNoticeBuyer} |

1. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction; provided, however, that if any fundamental term or provision of this Agreement is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith or the court may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
2. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.
3. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
4. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer's rights under Section 3, Section 6, and Section 10 are Buyer's exclusive remedies for the events specified therein.
5. Assignment. Buyer shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment, transfer, delegation, or subcontract in violation of this Section shall be null and void. No assignment, transfer, delegation, or subcontract shall relieve Buyer of any of its obligations hereunder. Seller may at any time assign, transfer, delegate, or subcontract any or all of its rights or obligations under this Agreement without Buyer's prior written consent.
6. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.
7. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person or legal entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
8. Choice of Law. This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Illinois, United States of America (including its statutes of limitations and 735 ILCS 105/5-5), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Illinois.
9. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions[, including, but not limited to, contract, equity, tort, fraud, and statutory claims], in any forum other than the US District Court for the [Northern/Southern/Central] District of Illinois, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the US District Court for the [Northern/Southern/Central] District of Illinois. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
10. **Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, or appendices attached to this Agreement, or the transactions contemplated hereby.**
11. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. [Notwithstanding anything to the contrary in Section 19, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.]
12. Force Majeure. Any delay or failure of Seller to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Seller's control, without Seller's fault or negligence and that by its nature could not have been foreseen by Seller or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, acts of terrorism, strikes, labor stoppages or slowdowns or other industrial disturbances, and shortage of adequate power or transportation facilities).
13. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

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|  | {d.sellerName} |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |
|  | {d.buyerName} |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |

EXHibits

Exhibit A

* [DESCRIPTION OF GOODS]
* [PRICE]
* [QUANTITY]
* [DELIVERY LOCATION]
* [SHIPPING TERMS]
* [SPECIFICATIONS PER LIMITED EXPRESS WARRANTY, IF ANY]