



DIAMANTI EULA, WARRANTY, AND SUPPORT AGREEMENTS

DIAMANTI END USER LICENSE AND WARRANTY AGREEMENT

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE SIGNIFYING YOUR ACCEPTANCE BY DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING THE SOFTWARE, EQUIPMENT AND/OR DIAMANTI SUPPORT. BY SO DOING, YOU ARE SIGNIFYING YOUR ACCEPTANCE AS "LICENSEE" OF THESE TERMS AND CONDITIONS. IF LICENSEE DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, LICENSEE SHOULD NOT INSTALL OR USE THE SOFTWARE, EQUIPMENT OR DIAMANTI SUPPORT. IF LICENSEE IS ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THEN LICENSEE WARRANTS THAT LICENSEE HAS THE AUTHORITY TO SO BIND SUCH COMPANY OR LEGAL ENTITY.

Unless otherwise amended in writing specifically referencing this Agreement, this Agreement shall apply to any Software, Equipment or Documentation provided by Diamanti to Licensee, whether directly or indirectly.

1. DEFINITIONS

1.1 "Agreement" means this End User License and Warranty Agreement.

1.2 "Documentation" means such manuals, documentation and any other supporting materials relating to the Software and Equipment as currently maintained by Diamanti and generally provided to its licensees and purchasers.

1.3 "Equipment" means Diamanti branded hardware, or hardware provided by Diamanti, to run the Software.

1.4 "Licensed Materials" means the Software and Documentation.

1.5 "Software" means the object code version of the computer software provided to Licensee under this Agreement, any extracts from such software, derivative works of such software or collective works constituting such software (such as subsequent releases) to the extent offered to Licensee under this Agreement, and the related Documentation. Software may include third party software licensed to Diamanti. Software shall not mean software subject to open source, GPL or similar licensing terms which may be included with the Software. Applicable copyright notices and open source, GPL or similar licensing terms can be found at www.diamanti.com/thirdpartysoftware.

2. SOFTWARE LICENSE

2.1 License. Subject to the terms and conditions of this Agreement, Diamanti grants to Licensee a nonexclusive, nontransferable, nonsublicensable, royalty-free license to use the Software, subject to the following limitations:

- (a) Licensee shall use the Software for its internal purposes only. In no event shall the Software be disclosed, made available to or used for the benefit of any third party; or sold, assigned, leased, resold or distributed or otherwise disposed of.
- (b) The license granted hereunder is limited to use of the Software on Equipment.
- (c) Licensee shall not copy the Software, except for archival or backup purposes or as required by normal installation procedures specified by Diamanti.
- (d) Except to the extent permitted by applicable law, Licensee shall not copy, modify, translate, decompile, disassemble or otherwise reverse engineer, or otherwise determine or attempt to determine source code or protocols from, the executable code of the Software, or create any derivative works based upon the Software or Documentation, and Licensee shall not permit or authorize anyone else to do so. Licensee also agrees that any works created in violation of this subsection are derivative works and, as such, Licensee assigns all right, title and interest therein to Diamanti.
- (e) Licensee shall not disclose to any third party any benchmarking or other test results concerning the performance or capability of the Software or Equipment without Diamanti's prior written consent.
- (f) Licensee shall not use the Licensed Materials or Equipment in order to gain information that may assist Licensee to compete against Diamanti.
- (g) Licensee shall only use those Software features paid for, or otherwise authorized by Diamanti, and shall not enable any unpaid for or unauthorized features by using a key to unlock the Software or otherwise accessing such features.

2.2 Documentation License. Diamanti will provide Licensee with Documentation for the Equipment and Software for its internal use. Licensee will keep the Documentation with the Equipment and not allow any unauthorized access

to, copying of, or the creation of derivative works from, the Documentation. Licensee shall not remove any proprietary markings or legends placed upon or contained within the Documentation, nor add any proprietary markings or legends.

2.3 Ownership. Diamanti retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Licensed Materials and any portion thereof, including, without limitation, any copy or derivative work of the Licensed Materials (or any portion thereof) and any update thereto. Any rights to the Licensed Materials not granted herein are reserved by Diamanti.

2.4 Equipment Transfer. This license shall automatically terminate in the event Licensee sells, assigns, or otherwise transfers the Equipment to a third party. In such event, Diamanti shall offer such third party a license, on its then standard terms and conditions, to use the Software in connection with the Equipment, provided however, that such third party is not, in Diamanti's reasonable judgment, a competitor.

3. DELIVERY

The Software may come preinstalled on the Equipment or Diamanti may make the Software and other Licensed Materials available to Licensee for download via a secure download site.

4. SUPPORT AND MAINTENANCE

Diamanti Software and Equipment support obligations are set forth at _____ and apply only in the event that Licensee has purchased support and Diamanti has accepted Licensee's purchase. No support, Software updates or upgrades are offered pursuant to this Agreement.

5. LIMITED WARRANTY

5.1.1 Equipment. Diamanti warrants that the Equipment will conform in all material respects with its published specifications for a period of one (1) year from delivery and in the case of SSD's, five (5) years from delivery (the "Equipment Warranty Period"). Customer's sole and exclusive remedy and the entire liability of Diamanti under this Section 5 will be the repair or replacement, at Diamanti's option, of any non-conforming Equipment or part thereof at no additional charge. Customer shall be responsible for the return of any non-conforming Equipment or part and Diamanti shall repair or replace the same within ten (10) business days and ship back to the Customer. Notwithstanding the foregoing, in the event Customer has purchased and paid for contemporaneously with its Equipment purchase, SSD component insurance to keep any non-conforming SSD, and Customer certifies (at a director level or above) that an SSD is defective and unusable, then Customer shall not be obliged to return the SSD and will receive a replacement SSD. The unexpired term of the Equipment Warranty Period applicable to the original Equipment shall apply to the repaired or replaced Equipment or part.

5.1.2 Software. For a period of ninety (90) days Diamanti will (a) repair or replace defective media on which any Software is furnished with the Equipment, caused by defects in materials and workmanship under normal use, and (b) use commercially reasonable efforts to correct or modify any such Software so as to conform in all material respects with its published specifications.

5.2 EXCEPT AS SPECIFIED IN THIS SECTION 5.1, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES RELATING TO THE EQUIPMENT AND SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ARE HEREBY DISCLAIMED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

6. TERM AND TERMINATION

This Agreement shall commence on the earlier of the date of Licensee's first use of the Software and shall continue in effect until terminated pursuant to the terms hereof. Either party may terminate this Agreement immediately upon written notice to the other party if the other party is in breach of this Agreement or fails to perform any of its duties or obligations hereunder (a "Default") and fails to cure such Default within thirty (30) days after receipt of written notice from the non-defaulting party specifying the occurrence or existence of the Default. Upon termination of this Agreement, the provisions of Sections 2.1 and 2.3 and Sections 5, 6, 7, 8 and 9 shall survive; provided, however, if Diamanti terminates this Agreement pursuant to this Section 6, the licenses granted in Section 2.1 shall terminate on the date of termination of this Agreement and shall not survive. Except as otherwise set forth herein, Licensee's license pursuant to Section 2.1 shall survive expiration or termination of this Agreement subject to Licensee's continued compliance with all of the terms and conditions contained herein.

7. LIMITATION OF LIABILITY

7.1 THE TOTAL LIABILITY OF DIAMANTI AND ITS SUPPLIERS, DISTRIBUTORS AND CONTRACTORS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR THE EQUIPMENT AND LICENSED MATERIALS. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

7.2 EXCEPT FOR A BREACH OF SECTION 2.1, IN NO EVENT SHALL A PARTY OR ITS SUPPLIERS OR CONTRACTORS BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA, RECOVERY OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DIAMANTI SHALL HAVE NO LIABILITY WITH RESPECT TO CLAIMS RELATING TO OR ARISING FROM THE USE OF NON-DIAMANTI PRODUCTS AND SERVICES, EVEN IF DIAMANTI HAS RECOMMENDED, REFERRED OR INTRODUCED LICENSEE TO SUCH PRODUCTS AND SERVICES.

8. INTELLECTUAL PROPERTY INDEMNITY

8.1 Subject to the limitations set forth in this Section 8 Diamanti shall defend or, at its option, settle any claim or action against Licensee and hold Licensee harmless from any and all liabilities, damages, expenses, settlements and costs (including reasonable attorneys' fees) finally awarded against Licensee or reached in a settlement by Diamanti on Licensee's behalf, arising from or occurring as a result of any third party claim or action alleging that the Software or Equipment infringes any United States patent or copyright.

8.2 Diamanti's obligation to indemnify Licensee under this Section 8 shall be subject to Licensee: (i) promptly notifying Diamanti in writing of first learning of the claim or action giving rise to the indemnity; (ii) providing Diamanti with sole and exclusive control over the defense and/or settlement of such action or claim; and (iii) providing Diamanti with proper and full information and reasonable assistance to defend and/or settle any such claim or action. Diamanti shall not be responsible for indemnifying Licensee with respect to costs incurred, or amounts paid in any settlement, unless Diamanti approved such costs or settlements in advance.

8.3 Diamanti will have no liability under this Section 8 for any claim or action where such claim or action results from (i) combination, operation or use of the Software or Equipment with other hardware or software not provided by Diamanti; (ii) modification of the Software or Equipment unless such modification was made or authorized by Diamanti; or (iii) compliance with Licensee's designs, specifications or instructions. Notwithstanding anything to the contrary, Diamanti shall not be liable for any claim based on Licensee's use of the Software or Equipment after Diamanti has informed Licensee of modifications of the Software or Equipment required to avoid such claims and offered to implement those modifications, if such claim would have been avoided by implementation of Diamanti's suggestions.

8.4 If the Software and/or Equipment becomes or is likely to become the subject of an infringement claim or action, Diamanti may at its sole option: (i) procure, at no cost to Licensee, the right to continue using the Software and/or Equipment; (ii) replace or modify the Software and/or Equipment to render it/them non-infringing; or (iii) if, in Diamanti's reasonable opinion, neither (i) nor (ii) above are commercially feasible, immediately terminate Diamanti's obligations (and Licensee's rights) under this Agreement with regard to such Software and/or Equipment, and, if Licensee returns such Software and/or Equipment to Diamanti, refund to Licensee the price originally paid by Licensee to Diamanti for such Software and/or Equipment as depreciated or amortized by an equal annual amount over three (3) years.

8.5 THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF DIAMANTI AND THE EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS OR COPYRIGHTS, BY THE SOFTWARE AND EQUIPMENT.

9. GENERAL

9.1 Assignment. Licensee may not assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Diamanti. This Agreement shall bind each party and its permitted successors and assignees. Any assignment in contravention of this Section 9.1 shall be null and void and of no force or effect.

9.2 Disputes. This Agreement shall be governed by and construed in accordance with the laws of California. The UN Convention on Contracts for the International Sale of Goods shall not apply. This Agreement is the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, communications or representations, written or oral, between the parties with respect to the subject matter of this Agreement and represents the complete integration of the parties' agreement. Any different or additional terms of any related purchase order, confirmation, quote or similar ordering document, even if signed by the parties after the date hereof, shall have no force or effect on this Agreement. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. This Agreement may be modified only by a written agreement executed by authorized officers of each party. No delay or omission to exercise any right or remedy accruing to a party upon any breach or default of the other party shall impair that right or remedy, or be construed to be a waiver of any breach or default.

9.3 Hazardous Use Restriction. The Software and Equipment are not designed for use, and Licensee agrees not to use, the Software and Equipment for the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems, or any other system whose failure could lead to injury, death, environmental damage, or mass destruction.

9.4 Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, labor disputes, shortages of supplies, fire, war, disruption related to terrorism, epidemics, or delays of common carriers. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

9.5 Compliance with Laws. Licensee hereby acknowledges that the Licensed Materials and Equipment supplied by Diamanti are subject to export controls under the laws and regulations of the United States and other countries. Licensee shall comply with such laws and regulations and agrees not to export, re-export or transfer the Licensed Materials and Equipment without first obtaining all required U.S. Government and other relevant government authorizations or licenses.

DIAMANTI SUPPORT AGREEMENT

BY USING OR RECEIVING DIAMANTI SUPPORT SERVICES ("SUPPORT"), YOU (A) REPRESENT THAT YOU MAY BIND YOURSELF, OR IF YOU ARE APPROVING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT TO BIND THAT COMPANY OR LEGAL ENTITY (COLLECTIVELY "CUSTOMER"); (B) REPRESENT THAT CUSTOMER HAS READ AND UNDERSTANDS THIS AGREEMENT; (C) REPRESENT AND WARRANT THAT ANY INFORMATION THAT CUSTOMER PROVIDES DIAMANTI WILL BE ACCURATE AND MAY BE RELIED UPON BY DIAMANTI; AND (D) AGREE TO BE BOUND BY THIS AGREEMENT. THIS AGREEMENT APPLIES TO SUPPORT PURCHASED BY CUSTOMER FOR THE PRODUCT(S) THAT CUSTOMER HAS RECEIVED, EITHER DIRECTLY FROM DIAMANTI OR FROM A RESELLER, AS FURTHER DEFINED BELOW.

1. DEFINITIONS

1.1 "Documentation" means such manuals, documentation and any other supporting materials relating to the Software as currently maintained by Diamanti and generally provided to its licensees.

1.2 "Error" means any reproducible failure of the Equipment or Software to perform any material function as set forth in Documentation.

1.3 "Equipment" means Diamanti branded hardware, or hardware provided by Diamanti, to run the Software.

1.4 "Licensed Materials" means the Software and Documentation.

1.5 "Permanent Solution" means a resolution to a problem that causes the Equipment or Software to substantially conform with specifications.

1.6 "Reseller" means a third party that is authorized to resell Equipment, Licensed Materials and Support to Customer.

1.7 "Software" means the object code version of the computer software provided to Licensee under this Agreement, any extracts from such software, derivative works of such software or collective works constituting such software (such as subsequent releases) to the extent offered to Licensee under this Agreement, and the related Documentation. Software may include third party software licensed to Diamanti. Software shall not mean software subject to open source, GPL or similar licensing terms which may be included with the Software. Applicable copyright notices and open source, GPL or similar licensing terms can be found at www.diamanti.com/thirdpartysoftware.

1.8 "Software Upgrades/Enhancements" means any new release of Software providing error corrections, improved usability, improved performance, and/or enhancements, each of which are distributed on a when-and-if-available basis free of charge to Customer receiving Software maintenance. Software Upgrade/Enhancement shall not include Software whether currently existing or developed in the future, which is marketed and offered by Diamanti to its customers generally as a separate product.

1.9 "Support Term" means the term of Support (e.g., one-year, three-years or five-years).

1.10 "Work Around" means a temporary resolution that restores the service and operation of the Equipment or Software without material loss of functionality.

2. TERM OF SUPPORT

The Support Term shall commence upon shipment of the Equipment and/or Software and, subject to timely payment, shall continue through the Support Term. Support is non-cancelable and non-transferable.

3. SOFTWARE SUPPORT

During the Support Term:

3.1 Diamanti shall (a) repair or replace defective media on which any Software is furnished, caused by defects in materials and workmanship under normal use, and (b) use commercially reasonable efforts to correct or modify any Software so as to conform in all material respects with its specifications. In this regard, Diamanti may provide Software Upgrades/Enhancements to correct or modify the documentation, or provide a Permanent Solution or Work Around (as further described below) to the Software, all at no additional charge to Customer. Diamanti does not warrant that Customer's use of the Software will be uninterrupted or error free.

3.2 Diamanti will provide Customer with any Software Upgrades/Enhancements for the Software at no additional charge. Software Upgrades/Enhancements, bug fixes, Permanent Solutions and Work Arounds may be made available electronically.

3.3 Permanent Solutions. Diamanti shall use commercially reasonable efforts to deliver a Permanent Solution to Customer in Diamanti's next regularly scheduled Software Upgrade/Enhancement. A Permanent Solution may include a patch, if such patch can be deployed in the Software without affecting service or operation. If such a patch cannot be provided, Diamanti shall use commercially reasonable efforts to provide a Work Around.

3.4 Work Arounds. A Work Around may consist of a patch or instructions on how to avoid the problem. If possible, a Work Around shall be capable of being installed, without undue interruption or degradation of service or operation, in the Software.

4. SUPPORT SERVICES

4.1 Diamanti offers the following Support services:

4.1.1 Developer Support Service. Diamanti will provide telephone help desk support subject to the targeted response times below, between the hours of 9 AM to 5 PM PST, Monday through Friday. Any necessary replacement part(s) will be dispatched to arrive within three (3) business days provided that determination (see Section 4.4) is made before 3 PM PST that any replacement part(s) are required in order for the Equipment to conform to its published specifications.

4.1.2 Production Support Service. Diamanti will provide telephone help desk support subject to the targeted response times below, twenty-four (24) hours a day, seven (7) days per week. Any necessary replacement part(s) will be dispatched to arrive the next business day provided that determination (see Section 4.4) is made before 3 PM PST that any replacement part(s) are required in order for the Equipment to conform to its published specifications.

4.1.3 Premium Support Service. Diamanti will provide telephone help desk support subject to the targeted responses time below, twenty-four (24) hours a day, seven (7) days per week. Any necessary replacement part(s) will be dispatched to arrive within four (4) hours after determining (see Section 4.4) that any replacement part(s) are required in order for the Equipment to conform to its published specifications. Alternatively, Customer shall permit Diamanti to store parts at the site where the relevant Equipment is located in order for Diamanti to meet the said response time.

4.2 Defective parts must be returned pursuant to Diamanti's return material authorization ("RMA") policy located on Diamanti's support portal. Diamanti reserves the right to charge Customer the cost of any replacement part if Customer fails to comply with its RMA policy. Notwithstanding the foregoing, in the event Customer has purchased and paid for contemporaneously with its Equipment purchase, SSD component insurance to keep a non-conforming SSD, and Customer certifies (at a director level or above) that an SSD is defective and unusable, then Customer shall not be obliged to return the SSD and will receive a replacement SSD. Returned parts shall become the property of Diamanti.

4.3 Response Times. Diamanti targets to provide responses for new cases in the timeframes outlined below based on the severity of the case:

Case Priority	Developer	Production	Premium
Severity 1	4 hours*	2 hours	1 hour
Severity 2	8 hours*	4 hours	2 hours
Severity 3	Next Business Day	8 hours	4 hours
Severity 4	Next Business Day	16 hours	8 hours

*Cases opened prior to 1:00 PM PST on a business day will be answered the same day. Cases opened after 1:00 PM PST may be answered on that business day or the next business day.

The case severity priority definitions are as follows:

Severity 1: Equipment has stopped working and is down.
Severity 2: Equipment is working but in a degraded state.
Severity 3: Equipment configuration issues.
Severity 4: Information and Enhancement requests.

4.4 Determination. For purposes of Section 4.1, determination that Equipment replacement parts are required will be made by a Diamanti Customer Support Engineer.

5. PROBLEM REPORTING

Diamanti will provide portal, email and telephone support to Customer on non-conformance issues relating to the Equipment and Software in accordance with the Response Timeframes set forth in Section 4.3.

Customers may notify Diamanti by telephone at US Toll Free +1-855-516-3767 or +1-408-805-3870 (International), by email (support@diamanti.com), or by Diamanti support portal and shall provide (i) Customer name, email address, phone number, serial number(s) of the appliance(s) being reported, and (ii) a description of the problem encountered and how to repeat the condition which brought about the problem. Severity 1 and Severity 2 issues (defined in Section 4.3) must be opened by calling Diamanti customer support. Severity 1 and 2 cases cannot be opened via email or portal.

6. EXCLUSIONS

6.1 Diamanti has no obligations to perform Support in the event of any abuse, misuse, accident, alteration including alteration, modification and/or installation of unauthorized equipment or software, neglect, unauthorized maintenance, repair, installation or movement, or exposure to any condition or operating environment beyond Diamanti's recommended physical, power, functional constraints or storage requirements (including temperature and/or humidity ranges).

6.2 The costs of configuration (after initial base configuration), reconfiguration, installation, de-installation, relocation, certification, supplies, accessories, media (unless covered by Section 3.1 above) and other expendables are also excluded and will be charged at Diamanti's current prices in effect at the time such costs are incurred.

7. CUSTOMER RESPONSIBILITIES

7.1 Diamanti's Support obligations are subject to:

- a. Customer's designation of personnel who have sufficient skill and training in using the Equipment and Software and who contact Diamanti for support ("Designated Personnel") after first attempting to resolve the issue themselves;
- b. Customer providing Diamanti reasonable access to Customer's site and/or network and personnel as Diamanti reasonably requests to assist Diamanti in performing the Support;
- c. Customer installation of Upgrades/Enhancements and recommended Equipment replacement parts, as reasonably directed by Diamanti;
- d. Customer maintaining in place and complying with all licenses required with respect to the Software.

7.2 Customer shall back-up any data or other information stored or contained in or on any Equipment, part or Software returned to Diamanti, and Diamanti excludes any liability for the loss of the same while in Diamanti's possession.

8. LIABILITY

8.1 EXCLUSION OF CERTAIN LOSSES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO THIS AGREEMENT, EVEN IF A PARTY HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

8.2 LIMITATION OF LIABILITY. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF DIAMANTI EXCEED THE FEES PAID BY CUSTOMER FOR SUPPORT IN THE 12 MONTHS PRECEDING THE DATE OF THE CLAIM. FOR PURPOSES OF THIS SECTION, A "CLAIM" SHALL MEAN, COLLECTIVELY, ALL CAUSES OF ACTION, DAMAGES, CLAIMS OR DISPUTES OR SIMILAR REQUESTS FOR COMPENSATION THAT ARE RELATED TO OR ARISE FROM THIS AGREEMENT AND FROM A PARTICULAR EVENT, ACT, OMISSION, FAILURE OR ROOT CAUSE.

9. GENERAL

9.1 Assignment. Customer may not assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Diamanti. This Agreement shall bind each party and its permitted successors and assigns. Any assignment in contravention of this Section 9.1 shall be null and void and of no force or effect.

9.2 Disputes. This Agreement shall be governed by and construed in accordance with the laws of California. The UN Convention on Contracts for the International Sale of Goods shall not apply. This Agreement is the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, communications or representations, written or oral, between the parties with respect to the subject matter of this Agreement and represents the complete integration of the parties' agreement. Any different or additional terms of any related purchase order, confirmation, quote or similar ordering document, even if signed by the parties after the date hereof, shall have no force or effect on this Agreement. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. This Agreement may be modified only by a written agreement executed by authorized officers of each party. No delay or omission to exercise any right or remedy accruing to a party upon any breach or default of the other party shall impair that right or remedy, or be construed to be a waiver of any breach or default.

9.3 Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, labor disputes, shortages of supplies, fire, war, disruption related to terrorism, epidemics, or delays of common carriers. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.