

MEMKOR STANDARD TERMS and CONDITIONS for SALE of GOODS and SERVICES

Memkor Inc., (hereinafter referred to as "SELLER") and "BUYER" whose name and address appears on the attached Quotation, or Purchase and Sale of Goods and Services Contract, hereby agree to be bound by the terms and conditions in connection with the sale of goods described in this contract hereof or on attachments. The terms and conditions apply in whole or as amended by any attachments duly signed as agreed and accepted by BUYER and SELLER. If conditions other than those included in Memkor Terms and Conditions Statement become a matter of disagreement or conflict SELLER Terms and Conditions Statement shall prevail.

1. AMOUNT AND TYPE OF GOODS. SELLER agrees to sell and BUYER agrees to buy the quantity and type of goods which are described herein or which comply with written specifications agreed and accepted by BUYER and SELLER. (Hereinafter referred to as "Goods/Services") as documented in this contract, BUYER'S Purchase Order, SELLER'S Proposal and /or Quotation, and other attachments signed by BUYER and SELLER.

2. ACCEPTANCE OF ORDER AND EXPIRY DATE. Orders are accepted only upon and subject to SELLER'S Terms and Conditions for Sale of Goods and Services, as printed herein, ("TERMS") and SELLER'S Proposal and/or Quotation. Unless expressly accepted in writing, any qualification or modification of Terms by BUYER in any written or printed document or otherwise shall be inapplicable. Unless previously withdrawn, SELLER'S Quotation expires 30 days after the date thereof. No binding contract shall be created by the acceptance on the part of BUYER, of a quotation or offer made by SELLER until notice of the acceptance of the order shall have been given by SELLER.

3. PRICE AND PAYMENT. The price of the Goods shall be as specified upon SELLER quotation, and attached purchase order from BUYER and written sales acceptance order from SELLER. (hereafter collectively referred to as S.O.) Any deviation on the S.O from SELLER quoted specifications initially requested by BUYER may result in price adjustments. Payment shall be net cash, in U.S. currency, thirty (30) calendar days from date of invoice unless otherwise provided for in writing by Memkor. SELLER reserves the right to require payment in advance or C.O.D. or to modify credit terms either before or after shipment of goods. Invoices not paid by the due date will have a 1.5% per month late charge, with a compounding interest (or the maximum rate allowable by law, if lower), assessed against any unpaid balance from the invoice due date until the payment date, together with Seller's cost of collection (including reasonable attorney's fees). The minimum order amount as established by SELLER is applicable.

4. TAXES AND TARIFFS. Prices are exclusive of all federal, state, and local excise, sales use, and similar taxes, if any. Customers purchasing for resale must furnish, where applicable, a resale certificate that bears the BUYER'S resale permit number. BUYER must pay any taxes as well as any tariffs or customs duty as applicable.

5. DELIVERY. The delivery of the Goods shall be made, in a single lot or multiple lots, as specified in S.O. and shall be made on or before the date specified herein, or within a reasonable time thereafter. The delivery schedule hereof can be extended by SELLER as specified in paragraph 19 hereof or failure of BUYER to pay past due invoices. All installments shall be separately invoiced and paid as billed without regard to future deliveries. Failure to pay for any installment when due shall excuse SELLER from making further deliveries. Delay in

delivery of any installment shall not relieve BUYER of its obligation to accept remaining installments. All claims for delay shall be deemed waived unless presented to SELLER in writing within ten (10) days after delivery of each shipment. The Goods shall be delivered to the place described in S.O.

6. BUYER REVISIONS. Any revisions (including delivery dates) to this order require written notice from BUYER which must be accepted in writing by SELLER. Any such revisions by BUYER may be subject to appropriate charges.

7. ENGINEERING CHARGES. Engineering charges represent the cost of taking SELLER'S existing technology (proprietary) and product database and adapting these to meet customer special needs. All resulting product designs and technology is exclusively the property of SELLER and cannot be disclosed to or manufactured by other third parties without the expressed written agreement of SELLER, who retains exclusive ownership of all contributing technology, data, intellectual property rights, database, and other property and information (hereafter referred to as "Intellectual Property"), except for information and or hardware provided by BUYER or another third party. Engineering charges are billable upon customer approval of the design (if required) and release of the design to Manufacturing.

8. PATENTS AND COPYRIGHTS

SELLER will defend or settle at its expense and indemnify and hold harmless BUYER in any action brought against BUYER alleging that SELLER, Products, or any of their parts manufactured by Memkor INC., infringe a United States patent or copyright, provided that BUYER promptly notifies SELLER in writing of such action, provides SELLER with all reasonable assistance, at SELLER's expense, for the defense or settlement of such action, and grants to SELLER sole authority and control for the defense or settlement of such action. If a final adjudication enjoins BUYER from using the Products, SELLER will, at SELLER's option and expense, either procure for BUYER the right to continue using such Products, or part, or replace or modify such Products, or part so that it becomes no infringing, or remove such Products, or part and refund to BUYER the purchase price, or license fee if applicable, and transportation costs.

SELLER shall not have any liability to BUYER if the alleged infringement is based on the use of such Products, or part with products not manufactured by SELLER which products infringe any patent or copyright, or SELLER's compliance with BUYER'S designs, specifications, or instructions.

The foregoing states SELLER's entire liability for patent or copyright infringement by such Products, or part.

9. PRODUCTS SPECIFICATIONS

SELLER reserves the right to make changes in the specifications of Products, provided the changes do not diminish the performance of the Products as confirmed by SELLER's Order Acknowledgment.

10. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL THE SELLER, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF NOTICE HAS BEEN GIVEN OF THE POSSIBILITY OF SUCH DAMAGES.

11. SHIPPING.

Goods are sold F.O.B. factory. Shipping, unless otherwise specified by BUYER, will be the least expensive transportation as determined by SELLER. The price will be paid by BUYER upon tender of delivery or will be invoiced to BUYER. It is expressly agreed that BUYER shall not be entitled to the paid documents of title until such time as the draft drawn against the same has been paid in full.

12. DEFAULT OF PAYMENT.

In the event that the BUYER defaults in paying any sum due under any contract as and when it becomes due or should BUYER be in breach in any respect of the contract entered into, SELLER shall have the right with or without notice at the discretion of SELLER, to either suspend all further deliveries until the default be made good or to terminate any contract then subsisting so far as any further goods remain to be delivered without prejudice to any cancellation charges or other claim or right SELLER might otherwise make or exercise. In the event that BUYER fails to perform any of the terms and conditions set forth herein and SELLER seeks to enforce BUYER'S obligations hereunder, BUYER shall be responsible for all of SELLER'S costs and expenses, including attorney's fees incurred by SELLER, in addition to all other liabilities imposed by this contract.

13. SHIPMENT UNDER RESERVATION.

It is agreed that SELLER will maintain title and the right of possession in the Goods sold until such time as payment, therefore, including shipping, taxes, duties, and any other applicable charges, is made by BUYER.

14. PACKAGING.

SELLER will determine the type of container and arrange for suitable packaging for domestic transport. Special packaging may be requested by BUYER and may result in additional charges to BUYER, provided BUYER'S request is in writing and delivered to SELLER.

15. RISK OF LOSS.

Risk of loss of the Goods shall pass to BUYER on delivery by SELLER to a common carrier. Unless expressly requested by BUYER, and at BUYER'S expense, no additional insurance will be purchased by SELLER and BUYER will be responsible for loss or damage to the product during shipment if the option for insurance is waived.

16. WARRANTIES.

The Goods sold hereunder, when installed and operated in accordance with the specifications provided by BUYER to SELLER are warranted to be free from defects and workmanship and materials for a period of one (1) year (or as may be extended for specific products as outlined in writing by SELLER) from the date of shipment, provided BUYER shall give notice in writing to SELLER, stating in what respects the product has failed to fulfill and warranty. (Failure to give notice within such period shall be a waiver of this warranty and any assistance rendered thereafter shall not extend to revive it.) SELLER shall be allowed a reasonable time after receipt of such notice to remedy the defect if any, and the BUYER agrees to render friendly assistance. If the product cannot be made to fulfill the warranty and the BUYER promptly returns it to SELLER at its place of business, SELLER will either furnish another product with the same warranty or at its option refund the amount paid, which shall constitute a settlement in full of all claims of every nature, SELLER'S liability being expressly limited to replacing the product. The warranty shall become void if the product is damaged due to the mishandling of the product by anyone other than SELLER, or if any attempts are made by any party other than SELLER to repair said product. The warranties provided herein, the obligations and liabilities of SELLER

hereunder and the rights and remedies of BUYER hereunder (i) are exclusive and in substitution for, and BUYER hereby waives, all of the warranties, guarantees, obligations, liabilities, rights, and remedies, express or implied, arising by law or otherwise, including but not limited to the implied warranty of merchantability, any implied warranty arising from a course of performance, course of dealing or usage of trade, any implied warranty of fitness, and any obligation or liability of SELLER arising from tort, or for loss of use, revenue or profit, or for incidental or consequential damages, and (ii) shall not be modified except by a written agreement dated even herewith or subsequent hereto signed on behalf of BUYER and SELLER by the respective duly authorized representatives.

17. RETURN POLICY - INCORRECT MATERIAL.

Upon determination that SELLER has shipped incorrect material and upon receipt of notice in writing from BUYER a Returned Material Authorization ("RMA") will be issued which authorizes the return of the material for replacement or credit and SELLER shall assume responsibility for reasonable inbound and outbound transportation charges, within the continental United States, incurred in the transaction. It is the BUYER'S obligation to ascertain the correctness of the material before any attempt is made to install it. SELLER will not accept return of, nor issue an RMA or credit for, any Goods which bear any appearance of having been installed, totally or in part, nor will transportation expenses be allowed.

18. RETURN MATERIAL AUTHORIZATION (RMA)

It shall be BUYER'S responsibility to inspect and notify SELLER if, when received, there is a non-conformance to specification and/or workmanship standards within thirty (30) days after receipt. If the Goods fail during the warranty period, BUYER must notify SELLER within 30 days after the termination of the warranty period. If initial information requested from BUYER to SELLER indicates that the Goods may be defective due to manufacturing deficiencies, an RMA will be issued. **BUYER shall assume responsibility for inbound shipping charges to MEMKOR, and SELLER for reasonable return transportation charges.** SELLER reserves the right to perform any tests it deems necessary, on-site or on SELLER'S premises to determine if the defect is due to manufacturing deficiencies. Any returned goods will be subject to the following: A) If tests show that the Goods are defective due to manufacturing deficiencies, a credit will be issued and the Goods will be repaired or replaced at SELLER'S option; B) If tests determine that the defect is the result of damage inflicted by others or faulty installment, no credit will be issued and BUYER will be invoiced for all expenses incurred in testing and shipping of the Goods. If BUYER wishes to have the Goods repaired, BUYER will issue a Purchase Order for the charges quoted by SELLER.

19. CANCELLATION BY BUYER.

BUYER may not cancel the purchase, nor reschedule the shipment or delivery, of the whole or any part or installment of the Goods ordered without written permission by the Seller.

20. INDEMNITY.

BUYER shall indemnify SELLER in respect of all damage or injury occurring to any personal property and against any actions and expenses in the connection for which SELLER may become liable in respect of the Goods sold if the damage or injury is caused by the negligence of BUYER or his servants or agents.

21. TERMINATION.

If BUYER violates or is officially charged with a violation of any law, regulation, or ordinance which may govern the sale, handling, or disposition of any of the Goods or if BUYER becomes

insolvent, or makes any assignment for the benefit of creditors, or is adjudged bankrupt, or if a receiver or trustee of BUYER'S property is appointed SELLER may, at its sole discretion, terminate this contract and may refuse to make any further deliveries. BUYER shall be responsible for charges as outlined in paragraph 12.

22. BUYER'S REMEDIES.

In the event of breach or repudiation of this contract by SELLER, BUYER'S right to damages shall be limited to the difference between the contract and the market price of GOODS and BUYER shall not have the right to "cover" and fix damages by contracting for substitute Goods. Further, SELLER shall not be liable, under any circumstances, for the cost of processing, lost profits, injury to goodwill, or any incidental or consequential damages as those terms are defined in the Uniform Commercial Code.

23. EXCLUSIVE AGREEMENT.

This contract constitutes the entire contract and exclusively determines the rights and obligations of the parties hereto, any prior course of dealing, custom, or usage of the trade or course of performance notwithstanding, and may not be modified except by a writing signed by SELLER.

24. NON-ASSIGNABILITY.

This contract shall not be assignable and delegable by either party hereto without the written consent of the other.

25. FORCE MAJEURE.

SELLER shall not be responsible for delays in delivery or any failure to deliver due to causes beyond SELLER'S control including, but not limited to, acts of God, war mobilization, civil commotion, riots, embargoes, domestic or foreign government regulations or orders, fires, floods, strikes, lockouts and other labor difficulties, or shortages of or inability to obtain shipping space or transportation or loss of material in transit.

26. CHOICE OF LAW.

This contract, and all of the rights and obligations of the parties hereto, shall be governed by the Uniform Commercial Code as enacted and in force in the State of Arizona on the date of this contract.