

**TOYOBO**  
Beyond Horizons  
**TOYOBO MC U.S.A., Inc.**  
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**1. Introduction.**

These General Terms and Conditions of Sale (Terms) apply to (a) all proposals and quotations submitted by Toyobo U.S.A., Inc. and its affiliated companies (Seller); (b) all purchase orders received by Seller; and (c) all sales of goods and services provided by Seller. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods, will be considered ancillary to a sale of goods, and the Uniform Commercial or other applicable law will apply to all goods and services to be provided by Seller (Goods).

**2. Formation.**

A written quotation issued by Seller is an offer to sell. Buyer will be deemed to have accepted these Terms and an Agreement will be formed by any of the following: (a) signing and returning to Seller a copy of any quotation; (b) sending to Seller a written acknowledgement of the quotation; (c) placing a purchase order or giving instructions to Seller respecting, manufacture, assortment, or delivery of the Goods (including instructions to bill and hold) following receipt of any quotation; (d) failing to cancel a pending purchase order within ten (10) days of receiving these Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of these terms. All sales by Seller to Buyer are expressly conditioned on Buyer's assent to these Terms and the terms stated in any of Seller's written quotations which are accepted by Buyer pursuant to this Section. These Terms and the terms stated on Seller's accepted quotation(s) constitute the entire Agreement between the parties with respect to the Goods and services provided by Seller. Seller objects to all terms proposed by Buyer, including any terms and conditions incorporated under Buyer's purchase orders. To the extent Buyer's purchase orders, releases, scheduling agreements or other purchasing documents may be construed as Buyer's offer to purchase under applicable law, Seller's acceptance of any such purchase order, release, scheduling agreement, or any other purchasing document issued by Buyer is expressly limited to these Terms. If these Terms are not acceptable, Buyer should notify Seller at once.

**3. Integration and Modification.**

- A. Revocation. The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of Seller's quotation (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral quotation, or Buyer's receipt of the Goods will constitute a binding contract under the terms of the Agreement.
- B. Complete Integration. The Agreement is a final, complete and exclusive statement of the Agreement of Buyer and Seller. An order or amendment submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these Terms), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller will be determined solely by the Agreement, and (unless seller otherwise advises Buyer in writing) notice is given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication. Seller will not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's Terms and conditions.
- C. Modification. SELLER IS WILLING TO NEGOTIATE WRITTEN CHANGES TO THESE TERMS SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED INCREASED COST OF PERFORMANCE RESULTING FROM SUCH CHANGES. No modifications, limitation, waivers or discharge of the Agreement or any of its terms will bind Seller unless in a writing signed by Seller's authorized employee. Notwithstanding anything to the contrary in this Agreement, no modification, limitation, waiver or discharge of any provision of the Agreement will affect Buyer's previously accrued liabilities to Seller. Seller may unilaterally correct mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or custom in the trade will not modify or waive any right of Seller.

**4. Authority of Seller's Agents**

No employee or agent of Seller has authority to bind Seller to any affirmation,

waiver, representation or warranty concerning the Goods, not contained in the Agreement. An affirmation, waiver, representation or warranty will not be deemed to be part of the basis of the Agreement and will not be enforceable, unless it is expressly included within the Agreement, it is not a part of the basis of the Agreement.

**5. Prices, Payment, and Risk of Loss.**

- A. Prices. The price of Goods will be price stated Seller's written quotations that have been accepted by Buyer according to these Terms. All prices are in United States dollars and must be paid in the currency in the quotation at the location specified in Seller's invoice. Buyer must pay all government fees levied on the inspection of the Goods, and reimburse Seller for such payments. Buyer will pay Seller upon receipt of Seller's invoices.
- B. Taxes. Buyer will pay all taxes due on any order, including, but not limited to, sales, use, excise or any direct or indirect tax of a similar nature of federal, state, county, or municipal origin. If Seller is required to collect and/or pay such taxes, Buyer shall reimburse Seller for the full amount.
- C. Payment Terms. The price of Goods delivered will be due and payable in accordance with the payment terms set forth in Seller's written quotations. Unless otherwise stated in the accepted quotation or Seller expressly agrees in a signed writing, payment terms for all Goods produced for Buyer must be 30 days from date of shipment.
- D. No Requirements/Output Contract. Nothing contained in the Agreement may be construed to create an exclusive relationship between Seller and Buyer. The Agreement does not constitute a requirements or output contract, unless, and then only to the extent, specifically designated in Seller's quotation to Buyer. Seller is bound to deliver only the minimum quantity expressly stated in the quotation(s) accepted by the Buyer as provided under these Terms.
- E. Risk of Loss and Title. The Agreement is for a manufacturing contract and, unless otherwise stated in a writing signed by Seller, the Goods will be delivered Ex Works at the location designated in Seller's quotation. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer when Seller places the Goods at the disposal of Buyer or a freight carrier. For transactions where Seller tenders the Goods to a freight carrier, unless otherwise agreed in a writing signed

by Seller, Seller may select its preferred freight carrier. Seller is not responsible for the carrier's performance, including but not limited to, delays, damage and / or scheduling errors caused by the freight carrier. Seller's breach of the Agreement will not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods will remain with Seller until Buyer pays for the Goods in full.

- F. Seller's Right to Cancel. Seller may cancel deliveries of goods if Buyer fails to make any payment when due. Seller's rights under this section shall be in addition to all other rights and remedies available to Seller upon Buyer's default. If payment is not made in accordance with said terms of payment, Buyer shall pay to Seller all reasonable costs of collection, including reasonable attorney's fees incurred by Seller in collecting sums due on account of the sale. In the event that payment is not made when due, interest on the overdue payment shall be due at the rate of one and one half percent per month. No return of Goods ordered and shipped will be allowed unless such Goods shall be shown to be defective.
- G. Price Adjustments. Seller reserves the right to increase the purchase prices of the Goods in proportion to any increase in cost to Seller of raw materials from the date of quotation to the date of shipment. If the market price of any applicable raw material materially increases more than 3% in a 30-day period, after shipping stock within that 30-day period at the current price, any remaining stock or new production will be at an increased price to be negotiated at Seller's discretion, which must be exercised in good faith and reasonably. Any agreed-upon price reductions will not apply to any directed-buy or recommended-buy raw material; and may be delayed, at Seller's reasonable discretion, if either outstanding money is owed to Seller, or if actual production volumes are not within at least 80% of volumes estimated in request for quotation package.
- H. Changes at Buyers Request. Changes requested by Buyer in quantities, specifications, or delivery schedules may only be made with the written consent of Seller. Seller may equitably increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, treating, material or process capability data, logistics requests, and other performance by Seller, required by changes requested by Buyer to the Goods, schedule or any

other performance by Seller after the acceptance date of any quotation. Seller is not obligated to perform any such changes, but will be compensated for them if Seller complies with such requested changes.

- I. Shipping and Packaging. Except as otherwise provided in the Agreement, Seller will not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. Use of expedited freight, if required, requires Seller's agreement and the most economical freight will be used. If such charges are specifically included in the price, any increase in rates for such services becoming effective after the date the price is quoted to Buyer will be added to the price. All Goods will be packed for shipment by Seller in accordance with its standard practices. Buyer will pay Seller for additional handling charges for expedited or other shipments outside Seller's normal and ordinary course of business.
- J. Invoices and No Debits Without Consent. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer must pay all invoices net 30 days after the date of shipment. Seller may change any payment term in the Agreement to Buyer on seven days' written notice. Buyer may not debit, offset, or chargeback any amount payable to Seller without Seller's written consent.
- K. Installments. Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale, and Buyer must pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future will be considered an installment delivery. A failure to pay for an installment within the time for payment is a material anticipatory breach of other installments by Buyer.
- L. Payment and Demand Acceleration. If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or a documentary letter of credit approved by a U.S. bank acceptable to Seller or other financial security for such payment or other obligations. In addition, all amounts owed by Buyer to Seller will be accelerated and payable immediately if Buyer fails to make any payment on time and as otherwise required or if Buyer sells or transfers the line of business for which the Goods are purchased or is a participant in a merger or other reorganization.

- M. Carrying Charge. All amounts not paid to Seller when due will incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.
- N. Buyer's Cooperation. All amounts due on any event which requires the action or cooperation of Buyer which Buyer fails to supply timely will become due upon such failure.
- O. Right of Offset. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and will pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts under written protest will not constitute a waiver by Buyer of its claims.
- P. Allocation of Payments. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.
- Q. Samples. Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement with Buyer.

**6. Manufacturing.**

Seller may elect to provide Goods for supply under this Agreement or to procure such Goods from third-party subcontractors or suppliers, and those sources may include countries outside the country of manufacture. To the extent that any requirements imposed by a governmental authority may limit or preclude the acceptance of products manufactured or sourced outside the United States (or from particular countries) or impose additional duties or other cost on products from such country of manufacture, Seller will have the option to shift the source of manufacture or supply to claim a Force Majeure and terminate the Agreement without liability to Seller.

**7. Delayed Shipment or Performance Excused for Various Reasons**

- A. Delayed Shipment. If shipment or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at

the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for Goods is due and payable within the terms listed on Seller's invoice after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer must accept shipment immediately.

- B. Delayed or Failed Delivery. Delivery will be made on or about the date indicated in Seller's acknowledgement to Buyer; however, all inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller will not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order, pandemic, or endemic (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; (v) failure of Seller's suppliers to perform including third party's failure to provide Directed Source Supplies (each a "Force Majeure"). If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule. Seller reserves the right to cancel any delivery in the event of a material adverse change in the availability or cost of materials or in the event of any other material unforeseen circumstances.
- C. Supply Allocation. Whenever Seller's supply of the Goods, materials, or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned above in Subsections A and B, Seller, in its sole discretion may allocate its supply to its own use or other customers.
- D. Effect. This Section will be effective even as to events described in Subsections A, B, and C which exist on the date of a quotation or of contract formation.

**8. Raw Materials and Production Facilities.**

Except when otherwise agreed to by Seller in writing, Seller reserves the right to select and unilaterally change: (i) the raw materials to be used in the manufacture of the Goods, (ii) the supplier of such raw materials, and (iii) select the facility and production line to be used in the manufacture of the Goods.

**9. Inspection, Testing and Rejection.**

A. Testing. To the extent the Agreement or applicable laws provide for Buyer's inspection as a condition for acceptance of the Goods, Seller's standard test procedures will be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement.

B. Rejection. All manuals, specifications, technical documentation, samples, and Goods will be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven (7) days of receipt or other reasonable time established by Seller. Buyer will have seven (7) days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, Buyer must send a sufficient number of samples to Seller for testing so that it will arrive no later than ten (10) days after receipt of the item by Buyer. Failure to so act will constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities will be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer must return them to Seller, express, collect, within three (3) days after such request. A failure to so return constitutes an irrevocable acceptance. No attempted revocation of acceptance will be effective, and Buyer will be limited to any available remedies specifically provided in the Agreement. Seller will advise Buyer within a reasonable time as to a disposition of the Goods rejected, whether to sort, destroy, return, or otherwise dispose of them. There will be no limitation on the time period in which Seller may cure any non-conformity or breach, provided it continues to make reasonable efforts to cure.

- C. Delivery Shortage. Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven (7) days of receipt.
- D. Expenses. Any expense incurred by Buyer in the inspection or testing of the Goods will be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.
- E. Claims. If Buyer claims delivery of material not as ordered, he must notify Seller within ten (10) days of receipt of shipment. If such claim is sustained, Seller will repair, replace, credit or complete order. Charges for repair or inspection of Goods by Buyer without prior authorization will not be responsibility of the Seller. Seller may inspect the Goods on Buyer's premises or of taking back the Goods and deciding whether to replace Goods or credit Buyer. Claims for shortage of Goods must be presented within 10 days after receipt and must state our packing slip number, number of cartons received, gross weight received to the nearest pound, and net weight of the Goods received to the nearest 10<sup>th</sup> (.10) of a pound. Any claim for shortage not presented in accordance with this provision will not be honored. Seller will not allow claims on those Goods further processed by Buyer resulting in change of dimensions, specifications or characteristics from Goods as ordered.

**10. Assumption of Risk.**

Buyer assumes all risks of using the Goods alone and in connection with other equipment. Seller shall not be liable to any of Buyer's employees or contractors for injuries sustained as a result of their use or handling of the Goods. Seller has no responsibility to determine the adequacy of the foundation, utilities, skills of Buyer's staff, or any other matter. Buyer assumes all risk of using the Goods in its location(s) and in connection with other equipment or improvements.

**11. General Express Warranties.**

- A. General. Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods to the extent performed by Seller will be free from defects in workmanship, excluding design, at the time of delivery, and will repair or replace Goods that fail due solely to manufacturing defects in workmanship,

which are discovered within the period of six (6) months from the delivery date to Buyer. Under no circumstances will the warranty period extend beyond twelve (12) months from the date of delivery of the alleged non-conforming or defective Goods to Buyer. When Buyer purchases to his own specifications, Seller will not be responsible for the application and/or the function of Goods. When Buyer purchases to Seller's specifications, Seller warrants only that the Goods sold shall conform to Seller's standard specifications or such other mutually agreed-to and documented specifications. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Because the Goods may be subject to a wide variety of use, the warranty is only against such defects and not against any other failures such as, but not limited to, those due to unknown causes. Perishable items are excluded from this warranty against defects.

- B. Nonmaterial Changes. Seller warrants to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated in these Terms and Seller's published and internal standards. Seller may, in its discretion, also rely on any generally accepted industry standards.
- C. Warranty Requirements. Seller's warranties will apply only if the Goods: (i) have been sorted, dried, handled, and used in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed, intended and approved for in writing by Seller; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; and (v) have been fully paid for.
- D. Records. Buyer must create, maintain, and make available to Seller, permanent records of the installation, maintenance, use and disposition of the Goods.

**12. Patent Warranties.**

Seller disclaims any implied warranty of non-infringement. If the formulas or specifications are furnished by Buyer, Buyer warrants that they do not infringe on any patent or other intellectual property right and must indemnify and hold harmless Seller from any claims of infringement against Seller relating to their use by Seller.

**13. Disclaimer and Limitation of Express Warranties.**

There are no express warranties other than those contained in the Agreement, and they are not assignable. Any representations as to performance and other matters, except as contained in the Agreement, were for illustrative purposes only, and do not constitute a warranty. No employee or agent of Seller is authorized to make warranties about Goods sold by Seller, and Buyer should not rely on any oral or written communications from employees or agents of Seller that purport to constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there will be no third-party beneficiaries to the express warranties contained in these Terms. Seller does not warrant any portion of the Goods not conceived, designed, developed or manufactured by Seller (whether or not specified by Buyer), but Seller must assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. Seller is not responsible for any errors or omissions or for any loss or damage resulting from any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by Seller is intended for general information only. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in the Agreement. Seller will not be quality or warranty issues related to Buyer-directed or Buyer-recommended sub-suppliers. Buyer will not debit Seller for such issues unless the directed supplier agrees in writing to corresponding debits from Seller. Any assistance furnished by Seller in the selection of goods or suggestions as to their processing or use are accepted by Buyer at Buyer's own risk, and Seller shall not be liable to Buyer for results obtained by Buyer from such assistance or suggestions.

**14. Disclaimer of Implied Warranties.**

SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, AND MAKES NO WARRANTY AS TO THE RESULTS BUYER CAN EXPECT FROM BUYER'S USE OF THE GOODS. There are no

warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill nor judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the Agreement. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's approval of specification and/or formulas constitutes Buyer's acceptance and waiver of any responsibility for a failure to consider information provided by Buyer. Buyer may request modifications to the specifications or formulas previously accepted by Buyer. In the event Buyer requests any such modification, Seller may reject the request or issue a new quotation for the modified specifications or formulas. Buyer may accept or reject the updated quotation – if Buyer accepts, the prior quotation is superseded; if Buyer rejects, the prior quotation and the Agreement remain in full force and effect. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

**15. Remedies and Limitation of Seller's Liability.**

- A. General. Defective Goods may be returned to Seller with the written consent of Seller and in accordance with its specific instructions. The right to return unused Goods on account of defect, short count, or for any other cause, shall be deemed waived by Buyer unless a request is made in writing within seven (7) days of Buyer's discovery, after reasonable diligence, of the cause to which such return relates; provided, however, that no return shall be permitted beyond the express warranty period.
- B. Buyer's Remedy Limited to Repair or Replacement. Defective or non-conforming Goods discovered during the express warranty period will be repaired or replaced by Seller without any additional charge, but Seller shall not be liable for any loss or damage directly or indirectly arising from the use of the Goods or from any other cause. Claims of defect related to Goods used or consumed by Buyer shall be deemed waived by Buyer unless such claims are made in writing within six (6) months from the receipt of Goods to which the claim relates and are accompanied by documentation supporting the claim of defect. If such Goods are

found to be defective, Seller will replace them without charge. Seller's liability is expressly limited to the replacement or repair of defective Goods at its option. Buyer shall have no remedies other than those stated above. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. The replacement or repair of Goods by Seller does not give rise to any new warranty, and the warranty period provided for in these Terms will not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.

- C. Defect Must Be Duplicable. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a non-conformity or defect attributable to Seller.

**16. Buyer's Indemnity.**

Buyer shall defend, indemnify and hold harmless Seller and its employees and agents against all third-party claims, damages, and other expenses (including reasonable attorney's fees) under theories of tort, product liability, negligence (ordinary and gross), warranty, contract, statute or otherwise arising from (i) Buyer's ownership, maintenance, transfer, transportation or disposal of the Goods sold hereunder, (ii) Buyer's use of the Goods sold hereunder, (iii) Buyer's failure to test the Goods or assure itself that the Goods are fit for Buyer's intended purpose, (iv) any infringement or alleged infringement of the intellectual property rights of others arising from Buyer's specifications, and (v) Buyer's violation or alleged violation of any federal, state, county or local laws or regulations, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices.

**17. Proprietary Rights.**

Seller retains exclusive rights in and to any proprietary information, data and materials related to the Goods sold hereunder, as well as the rights to all discoveries, inventions, patents and other proprietary rights that Seller may develop in the course of manufacturing the Goods. Buyer shall not reverse engineer any Goods sold by Seller or otherwise attempt to obtain any proprietary rights of Seller.

**18. Breach and Termination.**

- A. Default. If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover the Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.
- B. Compensation. Seller will be awarded interest, consequential and incidental damages and costs (such as interest and actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.
- C. Security. Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If Buyer does not post such security, Seller may cease performance of its obligations, and enforce its remedies for Buyer's default.
- D. Cumulative Rights and Limitations. All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, except that Seller will be entitled to only a single full recovery.
- E. Good Faith. Seller will not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.
- F. Waiver. Seller's failure or delay in enforcement of any provision will not constitute a waiver of a breach or of that provision.

**19. Consequential, Incidental, and Other Damages.**

BUYER AND THIRD PARTIES ARE NOT ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation will be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages will not affect the right of Seller to indemnification hereunder, and under no circumstance will Buyer recover more than the purchase price. UNDER NO CIRCUMSTANCES WILL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM.

**20. No Waiver.**

Any concession or indulgence made by Seller or its failure to insist on performance of any of these terms and conditions shall not be considered a waiver of any other terms, whether the same or similar. No waiver by Seller of any default or provision hereof shall be deemed a waiver of any subsequent default or provision.

**21. Governing Law and Jurisdiction.**

The Agreement is governed, construed, and enforced under the laws of the State of Michigan. The U.N. Convention on the International Sales of Goods does not apply. The Federal and State Courts of Oakland County, Michigan have exclusive jurisdiction over Buyer and Seller and the claims arising under or related to the Agreement or any controversy arising from their relationship unless waived in a writing signed by Seller and subject to any right of arbitration that may be provided by the Agreement. Any declaration of unenforceability of a provision will be as narrow as possible and will not affect the enforceability of the other provisions.

**22. Arbitration.**

At Seller's election, all controversies and claims arising out of or relating to the Agreement, or the breach thereof, will be settled solely by arbitration held in Oakland County, Michigan, but Seller may also elect to institute, before formation of the arbitration panel, an action for a claim and delivery or replevin action to enforce its security or other interests in the Goods. The arbitrator(s) may enter an interim award that the Goods be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereon. No demand for arbitration hereunder may be filed by Buyer. The arbitrator(s) will be bound by the terms of the Agreement and will not apply any principles of *ex aequo et bono* nor allow any claims not specifically permitted by the Agreement. The arbitrator(s) may include the fees of the arbitration tribunal and arbitrators in an award. The arbitration proceedings and the award will be confidential.

**24. Severability.**

Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal will be severed from this Agreement. Such severance will be as narrow as possible and may not affect the remainder of this Agreement in such action and other actions, unless the court or tribunal also finds, on the request of Seller that without such provision as originally written, the Agreement is not likely to meet the reasonably commercial expectations of Buyer and Seller and in such case, the court or tribunal will enter an equitable judgment of rescission, termination or reformation of this Agreement as necessary to reach an equitable result.

**25. Assignment.**

No right or interest in the Agreement may be assigned by Buyer without the prior written consent of the Seller. Any assignment attempted by Buyer will be void and ineffective for all purposes unless made in conformity with this section.