

GENERAL TERMS AND CONDITIONS OF SALE

BASIS OF SALE. All products and services furnished by Blickman Industries, L.L.C. ("**Seller**") to the buyer ("**Buyer**") are sold on the terms and conditions stated herein, and Seller's performance under any proposal or contract with Seller is subject to and expressly conditioned upon Buyer's agreement to these terms and conditions.

PRECEDENCE. These terms and conditions take precedence over any terms and conditions contained in Buyer's purchase order or other similar form or in any documentation incorporated by reference in Buyer's purchase order. No term or condition of any purchase order additional to, or different from, the terms and conditions set forth herein, shall become part of any agreement between Seller and Buyer unless expressly agreed to in writing physically signed by Seller.

PURCHASE ORDERS. By submitting a purchase order to Seller, Buyer agrees to be subject to these terms and conditions in their entirety. All purchase orders must be bona fide commitments showing definite quantities. No purchase order, whether or not submitted in response to a quotation by Seller, shall be binding upon Seller until Seller has accepted such purchase order by issuing an order acknowledgement. All quotations for products are based on Seller's standard product dimensions, unless expressly specified in writing, and agreed to by Seller in an order acknowledgment.

DELIVERY TERMS. For shipments within the domestic United States, shipments will be made FOB Origin. For shipments

outside the domestic United States, delivery terms for all products shall incorporate Incoterms 2010. All prices as set forth in an invoice do not include sales, use, or other taxes, or any U.S. port and export forwarding agent's fees, freight handling, or transportation charges, export/import license fees, customs duties, or the like, all of which shall be paid and/or absorbed by Buyer, who shall indemnify Seller against all claims and liabilities therefore. Seller reserves the right to perform export clearance filing for all export shipments, regardless of the Incoterm used. Buyer or Buyer's forwarder, as the case may be, shall cooperate with the Seller in all aspects of the export shipment. In the event Buyer, Buyer's agent, or Buyer's forwarder provides inaccurate or insufficient information to complete export declarations or re-routes shipments in-transit (i.e. any shipment that has left the origin dock) resulting in export declarations that do not match the actual shipment, Buyer will be responsible for any additional costs, fees, fines, or penalties levied against Seller by a government or a carrier. Seller may, at its option, make partial shipment and invoice Buyer therefore. Delivery dates are estimates only and shall not be binding on Seller. The foregoing applies unless otherwise agreed in writing by the parties.

PRICES. Prices quoted are subject to change or cancellation at any time without notice and in any event expire sixty (60) days following the date of the quote, unless otherwise indicated therein or extended in writing by Seller. Seller reserves the right to make adjustments to pricing, product offerings and product warranties for reasons including, without limitation, changing market conditions, product discontinuation, product and raw material unavailability, manufacturer price changes, supplier

price changes and errors in quotes or advertisements. Seller reserves the right to include taxes which may be applicable to the prices for the products in the event that Buyer does not supply Seller with the appropriate sales, use, excise or other applicable tax exemption certificates prior to sale of the Products to Buyer.

PAYMENT. Buyer shall make payments and deposits (if applicable) as set forth on Seller's invoice or purchase order. Unless otherwise set forth on such invoice or purchase order, payments are due and payable in U.S. Dollars thirty (30) days from the date of invoice, without deduction, withholding or set-off. Seller reserves the right to charge interest, or a fee in lieu of interest, at a rate of 1.5% per month or the highest rate allowed by the law on all overdue accounts, plus all costs associated with the collection of such overdue accounts (including, but not limited to, court costs, filing fees and attorneys' fees), with each fraction of a month counted as a full month. If Buyer at any time is delinquent in the payment of any invoice, Seller may in its sole discretion, and without prejudice to its other rights, withhold shipment of any products to Buyer. Whenever Seller in good faith deems itself insecure, Seller may cancel any outstanding purchase order with Buyer; decline to make delivery of products to Buyer; revoke any extension of credit to Buyer; reduce any unpaid debt by enforcing its security interest, created hereby, in all products (and proceeds therefrom) furnished by Seller to Buyer; and take any other steps necessary or desirable to secure Seller fully with respect to Buyer's payment for products and services furnished or to be furnished by Seller. Unless otherwise agreed in writing by the parties, partial payments

shall be applied in the following order of priority: (i) outstanding invoices (oldest first); (ii) any late payment interest; and (iii) payment of expenses incurred by Seller in recovering late payments.

DELIVERY / STORAGE FEES. Any dates quoted by Seller for delivery of any products are approximate only. Seller shall not be liable for any delivery of products in advance of or subsequent to the date quoted for delivery, however caused, and time for delivery is not of the essence. Seller reserves the right, at its option, to deliver overruns and underruns that are customarily and commercially reasonable and to invoice Buyer therefore. Buyer shall arrange for receipt of the products per the acknowledged and accepted scheduled delivery date noted on the order acknowledgement or as otherwise agreed by the parties in writing. Should Buyer or its carrier fail to take delivery of products on the scheduled delivery date, Seller may invoice Buyer fees for storage of the products from and after such date at a rate of Forty U.S. Dollars (USD \$40) per pallet per day (with a minimum of a single pallet). In such event, Seller may also give Buyer notice of its intent to sell the products, set a reasonable grace period for pick-up and then sell the products at a commercially reasonable price without prejudice to its right to claim damages from Buyer for any shortfall resulting from such sale or account to the Buyer for any excess achieved over the price in the order acknowledgement, in both cases having taken into account any charges related to the sale, or rescind the sale after such grace period.

INSPECTION / ACCEPTANCE / RETURNS & RESTOCKING

FEES. Unless otherwise agreed by the parties in writing, Buyer shall be deemed to have inspected and accepted the products within ten (10) days of receipt thereof. Any deficiency in the quality or quantity of such products must be reported within five (5) days after such deficiency is or should have been discovered during the inspection period. Buyer's claims regarding any such deficiency not discovered or discoverable during the inspection period shall be barred if not reported within the reporting period, except and to the extent that such claims are valid under Seller's warranty as set forth herein. Buyer may not return any products, under warranty claim or otherwise, without the original buyer first (i) providing to Seller (a) the reasons for such return, (b) the original purchase order and invoice from Seller, and (c) model number and quantity to be returned; (ii) obtaining Seller's prior approval therefore; and then (iii) complying with any instructions as Seller may give in authorizing any return. In the event of such return, Buyer shall pay the following restocking charges: (x) products accepted for credit will be subject to a restocking charge equal to 35% of the purchase price plus freight and any material or labor necessary to restore products to saleable condition; provided that such charge will be reduced to 15% for a return with a reorder; (y) there will be no charge for returns due to an error in process by Seller or defective products, subject to the warranty applicable thereto; and (z) such restocking charges will be 50% for products that are returned between six (6) and twelve (12) months from date of purchase. Items of special design, accessories or parts are not returnable. All goods returned

damaged are subject to the repair charges being deducted from credit. Seller will receive no credit for products returned greater than twelve (12) months from date of purchase or those returned unsuitable for resale (e.g., soiled, damaged or discontinued).

ORDER CANCELLATION / RESCHEDULING. Buyer may not cancel a purchase order accepted by Seller without the express written consent of Seller. Upon receipt of the purchase order from Buyer, Seller reserves the right to immediately procure materials and start production, and Buyer shall be liable for any raw materials, components or finished goods purchased or produced at such time or at the time of any purchase order change or cancellation.

RETENTION OF TITLE / SECURITY INTEREST. For good and valuable consideration, the receipt and sufficiency of which Buyer hereby acknowledges, Seller shall have, and Buyer hereby grants to Seller, a security interest and right of possession in and to all products covered hereunder and all accessions, replacements, proceeds, and products thereto or therefrom to secure payment of the purchase price of such products until the entire purchase price is paid in full to Seller. Buyer shall cooperate with Seller in complying with all applicable laws and regulations and perform all acts deemed necessary or advisable by Seller to perfect and ensure Seller's security interest in said products. Buyer will cooperate in whatever manner necessary to assist Seller in perfecting and recording such security interest.

WARRANTY (a) Prototypes, samples and other development products are sold "AS-IS" and without any representation or warranty, express or implied. **(b)** Buyer assumes all risk and liability for the use of Seller's products, whether used singly or in combination with other products. Seller warrants to the original purchaser only that its proprietary products furnished to such original purchaser will be free from defects in workmanship or materials under normal use and service for the life of the product, so long as owned by the original purchaser, according to limitations set forth in this Section. Buyer's sole and exclusive remedy, and Seller's sole and exclusive obligation under this warranty, is that defective products shall be repaired or replaced at Seller's option at no cost to the original purchaser, provided that (i) Seller obtains a written return authorization supplied by Seller's customer service department (which may be obtained by calling **800-247-5070** or **973-330-0557** or other method provided by Seller in writing) , (ii) such product is returned, properly packaged, with a copy of the original sales receipt, and (iii) Buyer pre-pays freight charges to and from Seller and ships such products in the original packaging. **(c)** Notwithstanding the foregoing, this warranty does not apply to (i) products that have been subject to abuse, misuse, accident, modification, alteration, tampering, negligence, lack of routine maintenance or misapplication, or products that have been repaired by other than Seller or its authorized representatives; (ii) glass, fabrics, vinyl, seat coverings, cushions, padding or their stitching, gluing or installation; (iii) component parts not manufactured by Seller, such as casters, caster inserts, any components made from

rubber or plastic, circuit boards, fan heaters, plumbing parts, electrical switches and components thereof, or (iv) custom fabricated products. For such component parts, Seller will only pass on the original manufacturer's warranty to Seller's equipment original purchasers. **(d)** The warranty provided in this Section is extended by Seller to Buyer as the original purchaser only, and is the sole and exclusive warranty for products manufactured by Seller. **(e)** Seller expressly excludes and disclaims (i) any responsibility for incidental or consequential damages claimed to have arisen from any defect in workmanship or materials, and (ii) any and all liability for equipment, materials and software not furnished by Seller which is attached to or used in conjunction with the products and (iii) all liability for operation of the system, if any, of which the products are a part. Seller specifically excludes any warranty of suitability, adaptability or compatibility of the Products with the Buyer's needs for the purposes of manufacturing finished, semi-finished or intermediate products, for the purposes of incorporating the products into other products. This warranty shall not be enlarged and no obligation or liability shall arise out of Seller's rendering of technical advice and/or assistance. **(e)** THE FOREGOING WARRANTY EXTENDS ONLY TO BUYER, AS THE ORIGINAL PURCHASER, AND UNLESS EXPRESSLY SET FORTH IN THIS SECTION, THERE ARE NO OTHER WARRANTIES, TERMS AND CONDITIONS, REPRESENTATIONS, INDEMNITIES, OR GUARANTEES WITH RESPECT TO ANY PRODUCTS SOLD BY SELLER TO BUYER, OR ANY OTHER OBLIGATION ON THE PART OF SELLER, EXPRESS OR IMPLIED, OR ARISING BY LAW OR CUSTOM, USAGE OR COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, ANY

IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER ALSO DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES WITH RESPECT TO THE PRODUCTS. **(f)** Buyer represents and warrants that any customized specifications for the products provided to Seller do not and will not infringe the rights of third parties (including but not limited to any third party Intellectual Property Rights).

LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, STATUTORY, EXEMPLARY OR CONSEQUENTIAL DAMAGES, DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, LOST GOODWILL, COST OF PURCHASED OR REPLACEMENT PRODUCTS, CLAIMS FOR SERVICE INTERRUPTIONS, IMPAIRMENT OF OTHER ASSETS, OR OTHERWISE, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OR OTHERWISE. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE. The parties expressly agree that the above limitation on damages is an allocation of risk constituting in part the consideration for this agreement.

INDEMNIFICATION. Buyer shall defend, indemnify and hold harmless Seller and the entities that control, are controlled by, or are under common control with Seller (such entities, "**Affiliates**"), and its and their directors, officers, employees, successors and assigns from and against any claims, demands,

lawsuits, losses, damages, liabilities, costs and expenses (including reasonable fees and disbursements of counsel), and judgments and settlements of every kind that may be made by any third party directly or indirectly arising out of or relating to (i) Buyer's use of the products, (ii) any negligence or willful misconduct of Buyer, and (iii) any claim that specifications, designs, processes or requirements provided by Buyer for the products hereunder infringes or misappropriates any third party Intellectual Property Rights.

LICENSES / INTELLECTUAL PROPERTY RIGHTS. Seller retains sole ownership and all right, title, and interest in and to all of its intellectual property, including, without limitation, content and materials on its website, ideas, methods, trademarks, service marks, trade names, symbols, logos, copyrights, patents, trade secrets, and know-how (collectively, the **"Intellectual Property"**) and all Intellectual Property Rights (as defined below) therein, and no licenses to any Intellectual Property or Intellectual Property Rights are created hereunder. The sale of products furnished hereunder does not convey any license by implication, estoppel or otherwise under any proprietary, patent right or other Intellectual Property Rights (as defined below) of Seller covering the products or combination of the products with other elements. **"Intellectual Property Rights"** means, collectively, copyright rights (including, without limitation, the exclusive right to use, reproduce, modify, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation trade names, trademarks, service marks, and trade dress), patent rights (including, without limitation, the exclusive right to make, use and sell), trade

secrets, know-how, moral rights, right of publicity, authors' rights, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, regardless of whether such rights arise under the laws of the United States, or any other state, country or jurisdiction.

CONFIDENTIAL INFORMATION. All Intellectual Property, specifications, drawings, documents, designs, data, information, computer software, technical matter, samples, and/or inventions acquired, made, conceived, or developed by Seller Intellectual Property Rights relating to the design, manufacture, studies, plans, drawings, documents, models, prototypes, objects or other materials relating to the products (including, without limitation, if acquired, made, conceived, or developed in cooperation with Buyer), incident to procuring or carrying out the transactions contemplated by these terms and conditions (collectively, the "**Confidential Information**") is and shall be the property of Seller and shall be disclosed to Buyer only to assist Buyer, and such disclosure shall be made only on a confidential basis and in no way shall impair the confidential nature thereof. Without the express prior written consent of Seller, Buyer shall not at any time disclose, or cause or permit any employee, agent or affiliated, controlled, or controlling entity of Buyer to disclose to any person, firm, corporation, or other entity, or use for its own or their benefit, or reproduce, the Confidential Information, or any information concerning the business affairs of Seller. Confidentiality obligations shall not extend to information that is in the public domain, has become public domain other than by Buyer's breach of confidentiality, that is

lawfully received from third parties, or to the extent Buyer is held to disclose information under the law or by governmental or judicial order. Confidentiality obligations with respect to trade secrets last indefinitely, for so long as such information remains a trade secret. The Confidential Information is provided by Seller with the express understanding that such Confidential Information is owned exclusively by Seller, and Buyer shall acquire no right, title or interest in or to the Confidential.

TRADE COMPLIANCE. Buyer shall comply with all applicable export control laws and shall not, directly or indirectly export, re-export, resell, ship, or divert any product, material, service, technical data, or software furnished hereunder to any person, entity, project, use, or country in violation of the laws or licensing requirements of the United States or any other appropriate national authority. Buyer shall indemnify and hold Seller harmless for any and all claims, demand, cost, fines, penalties, fees, expenses, or losses arising from Buyer's failure, intentional or unintentional, to comply with the foregoing paragraph.

ARBITRATION. Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, without limitation, statutory, common law, intentional tort and equitable claims) arising from or related to the products purchased by Buyer from Seller, the interpretation of these terms and conditions or any quotation, order confirmation or order entered into in connection herewith (collectively, these "**Terms**") or the breach, termination, or validity of these Terms, or the relationships which result from these Terms (including, to the full extent permitted by applicable

law, relationships with third parties who are not signatories hereto), or Seller's or any of its Affiliates advertising or marketing (collectively, a "**Claim**") WILL BE RESOLVED, UPON THE ELECTION OF SELLER, BUYER OR THE THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the rules of the American Arbitration Association. If arbitration is chosen with respect to any Claim, neither Seller nor Buyer will have the right to litigate that Claim in court or have a jury trial of that Claim or to engage in pre-arbitration discovery, except as provided in the applicable arbitration rules or by agreement of the parties involved. Further, Buyer will not have the right to participate as a member or representative of any class of claimants pertaining to any claim. Notwithstanding any choice of law provision included in these terms and conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. Sections 1-16). The arbitration will take place exclusively in New York, New York. Any court having jurisdiction may enter judgment on the award entered by the arbitrator(s). Each party will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY CONTAINED HEREIN, ALL MATTERS PERTAINING TO THE COLLECTION OF AMOUNTS DUE TO SELLER ARISING FROM PRODUCTS WILL BE LITIGATED IN COURT RATHER THAN THROUGH ARBITRATION.

GENERAL

AMENDMENT. These terms and conditions may be amended or supplemented only by a separate, signed agreement expressly amending or supplementing one or more of these terms and conditions and signed by a duly authorized representative of Seller and Buyer.

ASSIGNMENT. Buyer shall not assign its rights under any transactions contemplated by these terms and conditions without the express prior written consent of Seller.

SEVERABILITY. If any term of these terms and conditions is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the validity, legality or enforceability of the other terms and conditions hereof or thereof or the whole of these terms and conditions.

WAIVER. Any claim or right of Seller arising out of a breach of these terms and conditions or the transactions contemplated hereunder can be discharged in whole or in part by a waiver or renunciation of the claim or right only if such waiver or renunciation is supported by consideration and is in writing signed by a duly authorized representative of Seller. The waiver by Seller of a breach of any provision of these terms and conditions or any of the transactions contemplated hereunder shall not constitute a waiver of any other breach, or a subsequent breach of such provision for the same or any other cause. No waiver shall be effective unless it is in writing and signed by a duly authorized representative of Seller.

GOVERNING LAW. All transactions to which these terms and conditions apply shall be governed by and construed in

accordance with the laws of the State of New York, United States of America, without reference to principles of choice and conflict of laws. Seller and Buyer specifically exclude the application to such transactions of the United Nations Convention on Contracts for the International Sale of Goods (1980) and the United Nations Convention on the Limitation Period in the International Sale of Goods, as Amended by Protocol.

FORCE MAJEURE. Seller shall not be responsible for and no liability shall result to Buyer for any delays in delivery or in performance which result in circumstances beyond Company's reasonable control including, without limitation, acts of God, strikes, riots, fires, war, revolution, civil commotion, acts of a public enemy, acts of terror, assertions by third parties of infringement claims, late or non-delivery by suppliers to Seller, lack of adequate production capacity, failure or delay in plant start-up, breakdown of machinery or shortages of raw materials, power, equipment, field, transportation, containers, local, federal, or foreign governmental prohibitions or limitations on performance, any act, law or regulation of any government with jurisdiction over Seller, and all other contingencies beyond the reasonable control of the party claiming excuse which render performance by such party impractical ("**Force Majeure Event**"). In the event of shortage of production or supply of products for any reason, Seller reserves the right to allocate its supplies of products to itself as well as to unaffiliated customers, as it deems equitable. Seller may cancel any order upon written notice to Buyer should a Force Majeure Event continue for a period of sixty (60) or more consecutive days.

INDEPENDENT CONTRACTORS. The relationship between Seller and Buyer is that of independent contractors and not that of employer/employee, partnership or joint venture.

NOTICE. All notices required or permitted to be sent to Seller or Buyer shall be given in the English language, in writing, and shall be deemed duly delivered when received via: (i) e-mail, provided that a written copy of such notice is promptly delivered thereafter; (ii) facsimile, provided that a written copy of such notice is promptly delivered thereafter; or (iii) an internationally recognized commercial overnight courier service. All such notices shall be sent to the parties at such addresses as they shall make known to the other parties upon like notice.

LIMITATIONS. All limitations herein on Seller's liability and remedies for breach of any duty of Seller to Buyer or any other user of Seller's products are extended to Seller's affiliates, suppliers, distributors, and service providers, insofar as they may have any duties to Buyer or any other user of Seller's products.

SURVIVAL. Section 6 and Sections 10 through 18 shall survive the expiration or termination of these terms and conditions.