

[BUYER OR SELLER LETTERHEAD]

[DATE]

[METHOD OF DELIVERY]

[BUYER OR SELLER NAME AND ADDRESS]

[Attn: [NAME OF INDIVIDUAL CONTACT PERSON]]

[Dear [NAME]/Ladies and Gentlemen]:

The purpose of this letter agreement (this "**Agreement**") is to set forth in writing our [oral] agreement regarding the purchase of [DESCRIPTION OF GOODS] (the "**Goods**") by [BUYER] ("**Buyer**") from [SELLER] ("**Seller**") on the following terms and conditions:

1. Sale of Goods. Seller shall sell to Buyer and Buyer shall purchase from Seller the Goods in the quantities and at the price set forth in Exhibit A.

2. Delivery and Shipment. Seller shall deliver the Goods on the date(s) specified in Exhibit A. All goods shall be delivered during normal business hours to Buyer's address specified in Exhibit A (the "**Delivery Location**") using Seller's standard methods for packaging and shipping such Goods. Delivery shall be made [[FOB] Delivery Location/in accordance with the terms set forth in Exhibit A].

3. Title. Title passes to Buyer upon delivery of the Goods to the Delivery Location.

4. Acceptance of Goods. Within [NUMBER] days of receipt, Buyer shall inspect the Goods. Unless Buyer notifies Seller in writing of any nonconformities within [NUMBER] days of receipt, Buyer shall be deemed to have accepted the Goods without qualification and cannot thereafter reject any Goods. Once used, Goods are deemed to be fully conforming to this Agreement.

5. Price and Payment.

(a) Price. Buyer shall purchase the Goods from Seller at the price set forth in Exhibit A. The price includes all [packaging,] [transportation costs to the Delivery Location,] [insurance,] [and] [fees and applicable taxes][, including, but not limited to, all sales, use, or excise taxes].

(b) Payment. Buyer shall pay all invoiced amounts due to Seller [on receipt/within [NUMBER] days from the date] of Seller's invoice. Buyer shall make all payments hereunder in US dollars by [wire transfer/check/[OTHER PAYMENT METHOD]].

6. Warranties.

(a) Limited Warranty. Subject to the warranty limitation set forth in **Section 6(b)** below, Seller warrants that the Goods sold hereunder will be free from [material] defects in material and workmanship for one year after shipment, under normal and proper use and service.

(b) Warranty Limitation and Disclaimer. The warranty and remedies for breach of warranty provided for in this Agreement do not cover, and Seller shall not be liable for: (a) abnormal wear and tear or damage caused by use or handling which is improper or contrary to Seller's instructions; or (b) improper storage of Goods, including storage of Goods unprotected from weather. Items repaired or replaced, and designs corrected under warranty are warranted only for the remainder of the original warranty period. All literature about the Goods is for illustrative purposes only and does not contain a warranty of any kind. **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 6(a) ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

7. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8. Indemnification. Each party shall indemnify, hold harmless, and defend the other party and its successors and permitted assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by indemnified party, relating to any claim of a third party arising out of or occurring in connection with the Goods or the indemnifying party's negligence, willful misconduct, or material breach of this Agreement.

9. Confidentiality. All non-public, confidential or proprietary information of either party, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, in connection with this letter agreement is confidential, solely for the use of performing this letter agreement, and may not be disclosed or copied unless authorized in advance by the disclosing party in writing. This Section 9 does not apply to information that is: (a) in the public domain; (b) known to the recipient at the time of disclosure; (c) rightfully obtained by the recipient on a non-confidential basis from a third party; or (d) independently developed by the receiving party without reference to or use, in whole or in part, of any of the disclosing party's confidential information.

10. [Force Majeure]. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make

payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's [reasonable] control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"):

- (a) acts of God;
- (b) flood, fire, earthquake, [OTHER POTENTIAL DISASTER(S) OR CATASTROPHE(S), SUCH AS EPIDEMICS], or explosion;
- (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest;
- (d) government order, law, or actions;
- (e) embargoes or blockades in effect on or after the date of this Agreement; [and]
- (f) national or regional emergency; [and]
- [(g) strikes, labor stoppages or slowdowns, or other industrial disturbances;]
- [and]
- [(h) shortage of adequate power or transportation facilities;]
- [and]
- [(i) other [similar] events beyond the [reasonable] control of the impacted party].

The impacted party shall give notice within [NUMBER] days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the impacted party's failure or delay remains uncured for a period of [NUMBER] [consecutive] days following written notice given by it under this Section 10, [either party/the other party] may thereafter terminate this Agreement upon [NUMBER] days' written notice.]

11. Miscellaneous.

(a) This Agreement is governed by and construed in accordance with the laws of [STATE] without giving effect to any conflict of laws provisions that would result in the application of the laws of a different jurisdiction. Each party agrees to institute any legal suit, action, or proceeding arising out of this Agreement in the federal or state courts in each case located in [CITY], [STATE].

(b) If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral understandings, agreements, representations, and warranties with respect to such subject matter. This Agreement may not be modified except by a written instrument signed by the parties.

If the foregoing accurately reflects our understanding, kindly sign both copies of this Agreement and return one to me at your earliest convenience, keeping the other for your records.

Very truly yours,

[BUYER OR SELLER]

By: _____

Name: [NAME]

Title: [TITLE]

Accepted and agreed as of the date
first written above by:

[BUYER OR SELLER]

By: _____

Name: [NAME]

Title: [TITLE]

EXHIBIT A

- [DETAILED DESCRIPTION OF GOODS]
- [QUANTITY]
- [PRICE]
- [DELIVERY DATE]
- [DELIVERY LOCATION]
- [SHIPPING TERMS]