

# CRAFTMASTER STAINLESS TERMS AND CONDITIONS

This Manufacturing Supply Agreement, dated as of [DATE] (the "**Agreement**"), is entered into by and between Craftmaster Stainless, Inc., a California Corporation having its principal place of business at 3358 Monier Circle, Suite 3, Rancho Cordova, CA 95742 ("**Seller**"), and [BUYER NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] having [its principal place of business/an address] at [BUSINESS ADDRESS] ("**Buyer**"), and together with Seller, the "**Parties**", and each, a "**Party**").

WHEREAS, Seller is in the business of manufacturing and selling stainless steel brewing equipment;

WHEREAS, Buyer wishes to purchase certain Goods (as defined below) from Seller; and WHEREAS, Seller desires to manufacture and sell the Goods to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms have the meanings set out or referred to in this Section 1.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

"**Agreement**" has the meaning set forth in the preamble to this Agreement.

"**Basic Purchase Order Terms**" means, collectively, any one or more of the following terms specified by Buyer in a Purchase Order pursuant to Section 3.2: (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the Requested Delivery Date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the Delivery Location. For the avoidance of doubt, the term "Basic Purchase Order Terms" does not include any general terms or conditions of any Purchase Order.

"**Business Day**" means any day except Saturday, Sunday, or any other day on which commercial banks located in SACRAMENTO, CALIFORNIA are authorized or required by Law to be closed for business.

"**Buyer**" has the meaning set forth in the preamble to this Agreement.

**"Buyer Contracts"** means all contracts or agreements to which Buyer is a party or to which any of its material assets are bound.

**"Claim"** means any Action brought against a Person entitled to indemnification under Section 10.

**"Confidential Information"** has the meaning set forth in Section 13.1.

**"Control"** (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

**"Defective"** means not conforming to the Product Warranty under Section 9.2.

**"Defective Goods"** means goods shipped by Seller to Buyer pursuant to this Agreement that are Defective.

**"Delivery Location"** means the street address within the Territory for delivery of the Goods specified in the applicable Purchase Order.

**"Disclosing Party"** has the meaning set forth in Section 13.1.

**"Dispute"** has the meaning set forth in Section 17.16.

**"Dispute Notice"** has the meaning set forth in Section 17.16.

**"Effective Date"** means the date first set forth above].

**"Force Majeure Event"** has the meaning set forth in Section 17.21.

**"Goods"** means the goods identified on Schedule 1 and described in the Specifications.

**"Governmental Authority"** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, award, or determination entered by or with any Governmental Authority.

**"Indemnified Party"** has the meaning set forth in Section 10.1.

**"Indemnifying Party"** has the meaning set forth in Section 10.1.

**"Inspection Period"** has the meaning set forth in Section 4.6.

**"Intellectual Property Rights"** means all industrial and other intellectual property rights comprising or relating to: (a) Patents; (b) Trademarks; (c) internet domain

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names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (e) Trade Secrets; and (f) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world.

**"Law"** means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order, or other requirement or rule of law of any Governmental Authority.

**"Losses"** has the meaning set forth in Section 10.1.

**"Nonconforming Goods"** means any goods received by Buyer from Seller pursuant to a Purchase Order that: (a) do not conform to the goods listed in the applicable Purchase Order; (b) do not fully conform to the Specifications; or (c) materially exceed the quantity of Goods ordered by Buyer pursuant to this Agreement or any Purchase Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

**"Notice"** has the meaning set forth in Section 17.5.

**"Party"** has the meaning set forth in the preamble to this Agreement.

**"Patents"** means all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents, and patent utility models).

**"Payment Failure"** has the meaning set forth in Section 6.2(a).

"**Person**" means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority, or any other entity.

"**Personnel**" of a Party means any agents, employees, contractors, or subcontractors engaged or appointed by such Party.

"**Price**" has the meaning set forth in Section 5.1.

"**Product Warranty**" has the meaning set forth in Section 9.2.

"**Purchase Order**" means Buyer's purchase order issued to Seller hereunder, including all terms and conditions attached to, or incorporated into, such purchase order, and

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any Release issued by Buyer to Seller under the Purchase Order. For the avoidance of doubt, any references to Purchase Orders hereunder also include any applicable Releases.

"**Receiving Party**" has the meaning set forth in Section 13.1.

"**Release**" means a document issued by Buyer to Seller pursuant to a Purchase Order that identifies the quantities of Goods constituting Buyer's requirements (if such quantities are not specified in the original Purchase Order) and the Delivery Locations and Requested Delivery Dates for such Goods.

"**Representatives**" means a Party's Affiliates and each of their respective Personnel, officers, directors, partners, shareholders, attorneys, third-party advisors, successors, and permitted assigns.

"**Requested Delivery Date**" means the requested delivery date for Goods ordered hereunder that is set forth in a Purchase Order, which must be a Business Day no less than [5] days following delivery of the applicable Purchase Order to Seller.

"**Seller**" has the meaning set forth in the preamble to this Agreement.

"**Seller Contracts**" means all contracts or agreements to which Seller is a party or to which any of its material assets are bound.

"**Seller Tooling**" has the meaning set forth in Section 14.

"**Seller's Intellectual Property Rights**" means all Intellectual Property Rights owned by or licensed to Seller.

"**Seller's Trademarks**" means all Trademarks owned by or licensed to Seller.

"**Specifications**" means the specifications for the Goods attached hereto as (goods listed on estimate/quote/invoice)

"**Taxes**" means any and all present and future sales, income, stamp, and other taxes, levies, imposts, duties, deductions, charges, fees or withholdings imposed, levied, withheld, or assessed by any Governmental Authority, together with any interest or penalties imposed thereon.

"**Term**" has the meaning set forth in Section 6.1.

"**Territory**" means the US, and its territories and possessions.

"**Tooling**" means, collectively, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Seller in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto.

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"**Trademarks**" means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, corporate names and domain names, and other similar designations of source, sponsorship, association, or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

"**Trade Secrets**" means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures, and other confidential and proprietary information and all rights therein.

"**US**" means the United States of America.

"**Warranty Period**" has the meaning set forth in Section 9.2.

## 2. Purchase and Sale of Goods.

2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, during the Term, Buyer shall purchase exclusively from Seller, and Seller shall manufacture and sell to Buyer, Buyer's requirements of the Goods. Schedule 1 contains: (a) a description of the Goods to be manufactured and sold hereunder; (b) the purchase price for each of the

Goods; and (c) the quantity of the Goods, expressed as a percentage of Buyer's requirements of the Goods. Unless otherwise provided in Schedule 1, subject to the terms and conditions of this Agreement, Buyer shall purchase from Seller, and Seller shall manufacture and sell to Buyer, 100% of Buyer's requirements of the Goods. The Parties shall, from time to time, amend Schedule 1 to reflect any agreed revisions to any of the terms described in the foregoing clauses (a)-(c); provided that no such revisions will modify this Agreement or be binding on the Parties unless such revisions have been fully approved in a signed writing by authorized Representatives of both Parties.

2.2 Terms of Agreement Prevail Over Buyer's Purchase Order. The Parties intend for the express terms and conditions contained in this Agreement (including any Schedules and Exhibits hereto) and the Basic Purchase Order Terms contained in the applicable Purchase Order to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Agreement, and this Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any Purchase Order or other request or communication by Buyer pertaining to the sale of Goods by Seller, and any attempt to modify, supersede, supplement or otherwise alter this Agreement, will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized Representatives of both Parties.

2.3 Right to Manufacture and Sell Competitive Goods. This Agreement does not limit Seller's right to manufacture or sell, or preclude Seller from manufacturing or selling, to any Person, or entering into any agreement with any other Person related to the manufacture or sale of, the Goods and other goods or products that are similar to or competitive with the Goods.

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2.4 Seller as Favored. Notwithstanding anything in this Agreement to the contrary, if any term or condition set forth in this Agreement is less favorable to Seller than an analogous term or condition offered by Buyer to any of its other suppliers of goods (an "**Alternative Term**"), such term or condition of this Agreement shall automatically be deemed amended to adopt the Alternative Term, *mutatis mutandis*, retroactive to the date Buyer first offered or became bound to the Alternative Term. Buyer shall promptly notify Seller in writing in the event an Alternative Term would be more favorable to Seller than the analogous term or condition of this Agreement.

### 3. Ordering Procedure.

3.1 Non-binding Forecasts of Buyer's Requirements. From time to time, Buyer may, but shall not be required to, provide Seller with Forecasts. Forecasts are for informational

purposes only and do not create any binding obligations on behalf of either Party; provided, however, that Seller shall not be required to manufacture and sell to Buyer any quantity of Goods that is unreasonably disproportionate to any Forecast for the period covered by such Forecast.

3.2 Purchase Orders. Buyer shall issue to Seller Purchase Orders (containing applicable Basic Purchase Order Terms that are consistent with the terms of this Agreement), in written form via facsimile, e-mail, or US mail. By issuing a Purchase Order to Seller, Buyer makes an offer to purchase Goods pursuant to the terms and conditions of this Agreement and the Basic Purchase Order Terms contained in such Purchase Order, and on no other terms. For the avoidance of doubt, any variations made to the terms and conditions of this Agreement by Buyer in any Purchase Order are void and have no effect.

3.3 Acceptance, Rejection, and Cancellation of Purchase Orders. Seller accepts a Purchase Order by confirming the order in writing or by delivering the applicable Goods to Buyer, whichever occurs first. Seller may reject a Purchase Order or cancel a previously accepted Purchase Order, which it may do without liability or penalty, and without constituting a waiver of any of Seller's rights or remedies under this Agreement or any Purchase Order, by providing written notice to Buyer specifying the applicable date of rejection or cancellation:

- (a) if any one or more of the events described under **Sections 6.3(a)-(f)** has occurred;
- (b) pursuant to Seller's rights under Section 5.6(b) or Section 5.6(c); or
- (c) pursuant to Seller's rights under the last sentence of Section 5.8.

#### 4. Shipment, Delivery, Acceptance, and Inspection.

4.1 Shipment. Unless otherwise expressly agreed by the Parties in writing, Seller shall select the method of shipment of and the carrier for the Goods. Seller may, in its sole discretion, without liability or penalty, decide to make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale and Buyer shall prepay for the Goods shipped, in accordance with the payment terms specified in Section 5.3, whether such shipment is in whole

or partial fulfillment of a Purchase Order. Seller shall inspect prior to shipment. Buyer is responsible for damage or loss of Goods once shipment has commenced.

4.2 Packaging and Labeling. Seller shall properly pack, mark, and ship Goods and provide Buyer with shipment documentation showing the Purchase Order number, Seller's identification number for the subject Goods, the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the bill of lading number and the country of origin.

4.3 Delivery. Unless otherwise expressly agreed by the Parties in writing, Seller shall deliver the Goods to the Delivery Location, using Seller's standard methods for packaging and shipping such Goods.

4.4 Late Delivery. Any time quoted for delivery is an estimate only; provided, however, that Seller shall use commercially reasonable efforts to deliver all Goods on or before the Requested Delivery Date. If Seller has delayed shipment of all or any Goods for more than sixty (60) days after the Requested Delivery Date and if such delay is not due to any action or inaction of Buyer or otherwise excused in accordance with the terms and conditions of this Agreement, Buyer may, as its sole remedy therefor, cancel the portion of the related Purchase Order covering the delayed Goods by giving Seller written Notice thereafter. Subject to Buyer's rights under this Section 4.4, no delay in the shipment or delivery of any Good relieves Buyer of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Goods.

4.5 Transfer of Title and Risk of Loss.

(a) Title to Goods shipped under any Purchase Order passes to Buyer upon Seller's receipt of payment of the Price for such Goods by Buyer.

(b) Risk of loss to Goods shipped under any Purchase Order passes to Buyer upon Seller's tender of such units to the carrier.

4.6 Inspection. Buyer shall inspect Goods on arrival under this Agreement ("**Inspection Period**") and either accept or, only if any such Goods are Nonconforming Goods, reject such Goods without delay. Buyer will be deemed to have accepted Goods unless it provides Seller with written Notice of any Nonconforming Goods within [2] days following the Inspection Period, stating with specificity all defects and nonconformities, and furnishing such other written evidence or other documentation as may be reasonably required by Seller (including the subject Goods, or a representative sample thereof, which Buyer contends are Nonconforming Goods). All defects and nonconformities that are not so specified will be deemed waived by Buyer, such Goods shall be deemed to have been accepted by Buyer, and no attempted revocation of acceptance will be effective. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall determine, in its reasonable discretion, whether the Goods are Nonconforming Goods. If Seller determines that such Goods are Nonconforming Goods, Seller shall, in its sole discretion, either:

(a) replace such Nonconforming Goods with conforming Goods; or



(b) refund to Buyer such amount paid by Buyer to Seller for such Nonconforming Goods returned by Buyer to Seller.

Buyer shall ship, at Buyer's expense and risk of loss, all Nonconforming Goods to Seller's facility located at Seller's principal place of business or to such other location as Seller may instruct Buyer in writing. If Seller exercises its option to replace Nonconforming Goods, Seller shall ship to the Delivery Location, at Seller's expense and risk of loss, the replacement Goods.

THE REMEDIES SET FORTH IN THIS SECTION 4.6 ARE BUYER'S EXCLUSIVE REMEDY FOR THE DELIVERY OF NONCONFORMING GOODS, SUBJECT TO BUYER'S RIGHTS UNDER SECTION 9.5 WITH RESPECT TO ANY SUCH GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 4.6.

4.7 Limited Right of Return. Except as provided under Section 4.6, Section 9.4, and Section 9.7, Buyer has no right to return Goods shipped to Buyer pursuant to this Agreement.

## 5. Price and Payment.

5.1 Price. Buyer shall purchase the Goods from Seller at the prices set forth on Schedule 1 attached hereto ("**Prices**").

5.2 Shipping Charges, Insurance, and Taxes. Buyer shall pay for, and shall hold Seller harmless from, all shipping charges and insurance costs. In addition, all Prices are exclusive of, and Buyer is solely responsible for and shall pay, and shall hold Seller harmless from, all Taxes, with respect to, or measured by, the manufacture, sale, shipment, use, or Price of the Goods (including interest and penalties thereon); provided, however, that Buyer shall not be responsible for any Taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, Personnel or real or personal property or other assets;

5.3 Deposit. Within [5] of days of executing this Agreement, Buyer shall pay to Seller a nonrefundable deposit of 50% of the Price. This amount shall be applied to the Price upon Buyer's payment of the remaining balance (less deposit) to Seller. Should Buyer breach this Agreement in any way Seller shall have the right to convert this deposit without further consideration. If Buyer breaches this Agreement, Buyer understands and agrees Seller shall retain the deposit indefinitely.

5.4 Payment Terms. Buyer shall pay the deposit as set forth above and shall remit the remaining balance prior to Seller initiating the shipment process, or within a period of thirty (30) days of Seller advising Buyer that the Goods are ready for Buyer, whichever occurs earlier. Buyer shall make all payments in US dollars by cashier's check or wire transfer.

Buyer expressly understands all payments to Seller, including the deposit, are nonrefundable.

5.5 Failure to Ship. Buyer shall have thirty (30) days from Seller advising Buyer that the Goods are ready for Buyer, to initiate shipment, as set forth in Section 4. Seller will perform an inspection prior to shipment. Buyer shall inspect Goods prior to shipment. Buyer takes responsibility for the Goods upon receipt by carrier. After those thirty (30) days have

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expired, Seller will charge, and Buyer will pay, a monthly storage rental rate of \$2,000 per month, accruing every thirty (30) days the Goods remain onsite beyond the initial thirty (30) day shipment period. Should Buyer fail to pay the monthly storage rental rate, the outstanding balance shall accrue a 10% interest, compounded monthly. Should Buyer fail to ship the Goods within [3] of months, the Seller shall, in its sole discretion, have the opportunity to reclaim the Goods and terminate this Agreement, or, elect to continue to charge the monthly storage rental rate. Should the Seller terminate this Agreement under this Section, the Buyer shall nevertheless remain responsible for any outstanding balance and any outstanding interest.

5.6 Buyer's Unsatisfactory Credit Status. Each issuance of a Purchase Order to Seller will constitute Buyer's representation and warranty that Buyer is solvent and is able to pay for the Goods identified in such Purchase Order in accordance with the terms of this Agreement. Buyer shall furnish Seller with statements accurately and fairly evidencing Buyer's financial condition as Seller may, from time to time, reasonably request. Throughout the Term, Buyer shall be in compliance with all obligations to Buyer's creditors as and when such obligations are due and owing in the ordinary course of Buyer's business. Buyer shall notify Seller, in writing, immediately of any and all events that have had or may have a material adverse effect on Buyer's business or financial condition, including any change in management, sale, lease, or exchange of a material portion of Buyer's assets, a change in Control of Buyer, or the breach of any loan covenants or other material obligations of Buyer to its creditors. If, at any time, Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Seller's other right under this Agreement, at law or in equity, Seller may without liability or penalty, take one or more of the following actions:

- (a) on written Notice, modify the payment terms specified in Section 5.3 for outstanding and future purchases, including requiring Buyer to pay for Goods on a cash in advance or cash on delivery basis;
- (b) reject any Purchase Orders received from Buyer;
- (c) cancel any previously accepted Purchase Orders;

- (d) delay or withhold any further shipment of Goods to Buyer;
- (e) stop delivery of any Goods in transit and cause such Goods in transit to be returned to Seller;
- (f) on written Notice, terminate this Agreement;
- (g) accelerate the due date of all amounts owing by Buyer to Seller.

No action taken by Seller under this Section 5.5 (nor any failure of Seller to act under this Section 5.5) constitutes a waiver by Seller of any of its rights and remedies under this Agreement, including its right to enforce Buyer's obligation to make payments as required hereunder.

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5.7 Invoice Disputes. Buyer shall notify Seller in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within seven (7) days from Buyer's receipt of such invoice, but prior to the shipment of any Goods. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of dispute and shall pay all undisputed amounts due under such invoices within the period set forth in Section 5.3. The Parties shall seek to resolve any such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 17.16. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any such dispute, including Buyer's obligation to pay all due and undisputed invoice amounts in accordance with the terms of this Agreement.

5.8 Late Payments. Except for invoiced payments that Buyer has successfully disputed, Buyer shall pay interest on all late payments (whether during the Term or after the expiration or earlier termination of the Term), calculated daily and compounded monthly, at the lesser of the rate of ten (10%) percent per month or the highest rate permissible under applicable Law. Buyer shall also reimburse Seller for all reasonable costs incurred by Seller in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at Law (which Seller does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any amounts when due under this Agreement, Seller may (a) suspend the delivery of any Goods, (b) reject Buyer's Purchase Orders or cancel accepted Purchase Orders pursuant to the terms of Section 3.3 or (c) terminate this Agreement pursuant to the terms of Section 6.2(a).

5.9 No Set-off Right. Buyer shall not, and acknowledges that it will have no right, under this Agreement, any Purchase Order, any other agreement, document or Law to, withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller

or any of its Affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or Seller's Affiliates, whether relating to Seller's or its Affiliates' breach or non-performance of this Agreement, any Purchase Order, any other agreement between (a) Buyer or any of its Affiliates and (b) Seller or any of its Affiliates, or otherwise.

5.10 Security Interest. To secure Buyer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Buyer to Seller, Buyer hereby grants Seller a first-priority security interest, with priority over all other liens, claims, and encumbrances, in all inventory of goods purchased under this Agreement (including Goods and Nonconforming Goods), wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer acknowledges that the security interest granted under this Section 5.10 is a purchase-money security interest under California law. Seller may file a financing statement for such security interest and Buyer shall execute such statements or other documentation necessary to perfect Seller's security interest in such Goods. Buyer also authorizes Seller to execute, on Buyer's behalf, such statements or other documentation necessary to perfect Seller's security interest in such Goods. Seller shall be entitled to all applicable rights and remedies of a secured party under applicable Law.

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### 6. Term; Termination.

6.1 Term. The term of this Agreement commences on the Effective Date and continues for the lifetime of the equipment unless it is earlier terminated pursuant to the terms of this Agreement or applicable Law (the "**Term**").

6.2 Seller's Right to Terminate. Seller may terminate this Agreement, by providing written Notice to Buyer:

(a) if Buyer fails to pay any amount when due under this Agreement ("**Payment Failure**");

(b) if Buyer is in breach of any representation, warranty or covenant of Buyer under this Agreement (other than committing a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within a commercially reasonable period of time (in no case exceeding seven (7) days) after Buyer's receipt of written Notice of such breach;

(c) pursuant to and in accordance with Section 5.6(f); or

(d) if Buyer (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

(e) if Seller terminates any other agreement between (i) Seller and (ii) Buyer or Buyer's Affiliates, due to Buyer's or Buyer's Affiliates' breach or non-performance thereof; or

(f) if without obtaining Seller's prior written consent, (i) Buyer sells, leases, or exchanges a material portion of Buyer's assets, (ii) Buyer merges or consolidates with or into another Person, or (iii) a change in Control of Buyer occurs.

Any termination under this Section 6.2 will be effective on Buyer's receipt of Seller's written Notice of termination or such later date (if any) set forth in such Notice.

### 6.3 Effect of Expiration or Termination.

(a) Upon the expiration or earlier termination of this Agreement, all indebtedness of Buyer to Seller under this Agreement, any other agreement or otherwise, of any kind, shall become immediately due and payable to Seller, without further notice to Buyer.

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(b) Expiration or termination of the Term will not affect any rights or obligations of the Parties that:

(i) come into effect upon or after termination or expiration of this Agreement; or

(ii) otherwise survive the expiration or earlier termination of this Agreement pursuant to Section 17.4 and were incurred by the Parties prior to such expiration or earlier termination.

(c) Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by Seller. With respect to any Goods that are still in transit

upon termination of this Agreement, Seller may require, in its sole discretion, that all sales and deliveries of such Goods be made on either a cash-only or certified-check basis.

(d) Upon the expiration or earlier termination of this Agreement, Buyer shall:

(i) return to Seller all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Seller's Confidential Information;

(ii) permanently erase all of Seller's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems; and

(iii) certify in writing to Seller that it has complied with the requirements of this clause.

(e) Subject to Section 6.3(b), the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of either Party's rights, remedies or defenses under this Agreement, at law, in equity or otherwise.

## 7. Certain Obligations of Buyer.

7.1 Certain Prohibited Acts. Notwithstanding anything to the contrary in this Agreement, neither Buyer nor any Buyer Personnel shall:

(a) make any representations, warranties, guarantees, indemnities, similar claims, or other commitments:

(i) actually, apparently or ostensibly on behalf of Seller, or

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(ii) to any customer or other Person with respect to the Goods, which are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Agreement or any written documentation provided by Seller to Buyer.

(b) engage in any unfair, competitive, misleading, or deceptive practices respecting Seller, Seller's Trademarks or the Goods, including any product disparagement; and

(c) separate any software or accessories sold, bundled or packaged with any Good from such Good or sell, license or distribute such software on a standalone basis, or remove, translate or modify the contents or documentation of or related to such software or accessories, including any customer license agreements or warranty statements.

7.2 Restrictions on Sales or Delivery Outside the Territory. Neither Buyer nor any Buyer Personnel or Representatives shall:

(a) sell or offer to sell any of the Goods or any other products incorporating any of the Goods outside the Territory, unless such sales are made with the prior written consent of Seller (which consent may be withheld or withdrawn for any or no reason);

(b) ship or otherwise deliver Goods or any other products incorporating any of the Goods to any facility in a location that is outside of the Territory unless such location has been approved in writing by Seller (which consent may be withheld or withdrawn for any or no reason); or

(c) sell, offer to sell, ship, or deliver Goods or any other products incorporating any of the Goods outside of the Territory except in compliance with all of the terms and conditions contained in this Section 7 and in Section 8 of this Agreement.

7.3 Government Contracts. Buyer shall not resell Goods to any Governmental Authority or its respective agencies without Seller's prior written approval. Unless otherwise separately agreed in writing between Seller and Buyer, no provisions required in any US government contract or subcontract related thereto shall be a part of this Agreement or imposed upon or binding upon Seller, and this Agreement shall not be deemed an acceptance of any government provisions that may be included or referenced in Buyer's request for quotation, Purchase Order or any other document.

7.4 Credit Risk on Resale of the Goods to Customers. Buyer shall be responsible for all credit risks with respect to, and for collecting payment for, all products (including Goods) sold to its customers or other third parties, whether or not Buyer has made full payment to Seller for such products. The inability of Buyer to collect the purchase price for any product shall not affect Buyer's obligation to pay Seller for any Goods.

8. Compliance with Laws. Buyer shall at all times comply with all Laws applicable to this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use or sale of the

Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the

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purchase, use or resale of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of resale, lease, shipment, use or otherwise, that violates any Law.

9. Representations and Warranties.

9.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that:

(a) it is a [corporation/limited liability company/[TYPE OF ENTITY]], duly organized, validly existing, and in good standing under the laws of the [[STATE OF ORGANIZATION];

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required;

(c) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;

(d) the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement, and the delivery of this Agreement by Buyer, have been duly authorized by all necessary action on the part of Buyer;

(e) the execution, delivery, and performance of this Agreement by Buyer will not violate, conflict with, require consent under or result in any breach or default under (i) any of Buyer's organizational documents, (ii) any applicable Law or (iii) with or without notice or lapse of time or both, the provisions of any Buyer Contract;

(f) this Agreement has been executed and delivered by Buyer and (assuming due authorization, execution, and delivery by Seller) constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms;

(g) it is in compliance with all applicable Laws and Buyer Contracts relating to this Agreement, the Goods and the operation of its business;

(h) it has obtained all licenses, authorizations, approvals, consents, or permits required by applicable Laws to conduct its business generally and to perform its obligations under this Agreement;



(i) it has secured and will provide proof of funding upon request of Seller, prior to Seller's execution of this Agreement;

(j) it is not insolvent and is paying all of its debts as they become due; and

(k) all financial information that it has provided to Seller is true and accurate and fairly represents Buyer's financial condition.

9.2 Limited Product Warranty. Subject to the provisions of Sections 9.4 through 9.7, Seller warrants to Buyer (the "**Product Warranty**") that:

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(a) for a period of 10 years from the date of receiving a Good (the "**Warranty Period**"), each Good will materially conform to [the specifications set forth in Exhibit [A/B/C/D]] [and will be free from significant defects in material and workmanship]; and

(b) Buyer will receive good and valid title to all Goods, free and clear of all encumbrances and liens of any kind.

9.3 Product Warranty Limitations. The Product Warranty does not apply to any Good that:

(a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller;

(b) has been reconstructed, repaired, or altered by Persons other than Seller or its authorized Representative; or

(c) has been used with any third-party products, hardware, or product that has not been previously approved in writing by Seller.

9.4 Buyer's Exclusive Remedy for Defective Goods. Notwithstanding any other provision of this Agreement (except for Section 9.7), this Section 9.4 contains Buyer's exclusive remedy for Defective Goods. Buyer's remedy under this Section 9.4 is conditioned upon Buyer's compliance with its obligations under Section 9.4(a) and Section 9.4(b) below. During the Warranty Period, with respect to any allegedly Defective Goods:

(a) Buyer shall notify Seller, in writing, of any alleged claim or defect within seven (7) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period);

(b) Buyer shall ship, at its expense and risk of loss, such allegedly Defective Goods to Seller's facility located at Seller's principal place of business for inspection and testing by Seller;

(c) if Seller's inspection and testing reveal, to Seller's reasonable satisfaction, that such Goods are Defective and any such defect has not been caused or contributed to by any of the factors described under Section 9.3 above, subject to Section 9.4(a) and Section 9.4(b). Seller shall in its sole discretion] and at its expense, repair or replace such Defective Goods; and

(d) Seller shall ship to Buyer, at Buyer's expense and risk of loss, the repaired or replaced Goods to a location designated by Buyer.

Buyer has no right to return for repair, replacement, credit, or refund any Good except as set forth in this Section 9.4 (or if otherwise applicable, Section 4.6 or Section 9.7). In

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no event shall Buyer reconstruct, repair, alter or replace any Good, in whole or in part, either itself or by or through any third party.

SUBJECT TO SECTION 9.7, THIS SECTION 9.5 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN SECTION 9.3.

9.5 DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES; NON-RELIANCE. EXCEPT FOR THE PRODUCT WARRANTY SET FORTH IN SECTION 9.3, (A) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR PERFORMANCE OF GOODS OR PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTIONS 9.2 AND 9.3 OF THIS AGREEMENT.

9.6 Third-Party Products. Buyer acknowledges that the Goods purchased by Buyer under this Agreement may contain, be contained in, incorporated into, attached to, or packaged together with products manufactured by a third party ("**Third-Party Products**"). Third-Party Products are not covered by the warranty in Section 9.2. For the avoidance of

doubt, Seller makes no representations or warranties with respect to any Third-Party Products.

9.7 Withdrawal of Goods. If Seller determines that any Goods sold to Buyer may be Defective, at Seller's request, Buyer shall withdraw all similar Goods from sale and, at Seller's option, either return such Goods to Seller (pursuant to the terms of Section 9.4(b)) or destroy the Goods and provide Seller with written certification of such destruction. Notwithstanding the limitations of Section 9.4, if Buyer returns all withdrawn Goods or destroys all withdrawn Goods and provides Seller with written certification of such destruction within seven (7) days following Seller's withdrawal request, in either case, consistent with Seller's instructions, unless any such defect has not been caused or contributed to by any of the factors described under Section 9.3, Seller shall (a) repair or replace all such returned Goods or (b) replace such destroyed Goods, in either case, pursuant to the terms of Section 9.4(d). THIS SECTION 9.7 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY GOODS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION 9.7.

#### 10. Indemnification.

10.1 Buyer Indemnification. Subject to the terms and conditions of this Agreement, including those set forth in Section 10.2, Buyer (as "**Indemnifying Party**") shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns] (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest,

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awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right under this Agreement, including but not limited to indemnification, and the cost of pursuing any insurance providers (collectively, "**Losses**"), relating to or arising out or resulting from any third-party Claim or any direct Claim against Indemnifying Party alleging:

(a) a breach or non-fulfillment of any representation or warranty set forth in this Agreement by Indemnifying Party or Indemnifying Party's Personnel;

(b) any negligent or more culpable act or omission of Indemnifying Party or its Personnel (including any recklessness or willful misconduct) in connection with the performance of this Agreement; or

(c) any bodily injury, death of any Person or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party or its Personnel; or

(d) any failure by Indemnifying Party or its Personnel to comply with any applicable Laws.

10.2 Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Agreement, an Indemnifying Party is not obligated to indemnify or defend (if applicable) an Indemnified Party against any Claim if such Claim or corresponding Losses arise out of or result from the Indemnified Party's or its Personnel's:

(a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); or

(b) bad faith failure to materially comply with any of its obligations set forth in this Agreement.

10.3 EXCLUSIVE REMEDY. THIS SECTION 10 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR EACH INDEMNIFIED PARTY FOR ANY DAMAGES COVERED BY THIS SECTION 10.

#### 11. Limitation of Liability.

11.1 NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL SELLER OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY

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(CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2 MAXIMUM LIABILITY FOR DAMAGES. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED TWENTY PERCENTAGE OF THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT TO THIS

AGREEMENT IN THE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11.3 ASSUMPTION OF RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

## 12. Intellectual Property Rights.

12.1 Ownership. Buyer acknowledges and agrees that:

(a) except to the extent provided in a separate written agreement between Buyer and Seller, Seller (or its licensors) will retain all Intellectual Property Rights used to create, embodied in, used in, and otherwise relating to the Goods and any of their component parts;

(b) any and all Seller's Intellectual Property Rights are the sole and exclusive property of Seller or its licensors;

(c) Buyer shall not acquire any ownership interest in any of Seller's Intellectual Property Rights under this Agreement;

(d) any goodwill derived from the use by Buyer of Seller's Intellectual Property Rights inures to the benefit of Seller or its licensors, as the case may be;

(e) if Buyer acquires any Intellectual Property Rights in or relating to any product (including any Good) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either Party; and

(f) Buyer shall use Seller's Intellectual Property Rights only in accordance with this Agreement and any instructions of Seller.

12.2 Prohibited Acts. Buyer shall not:

(a) take any action that does or may interfere with any of Seller's rights in or to Seller's Intellectual Property Rights, including Seller's ownership or exercise thereof;

(b) challenge any right, title, or interest of Seller in or to Seller's Intellectual Property Rights;

(c) make any claim or take any action adverse to Seller's ownership of Seller's Intellectual Property Rights;

(d) register or apply for registrations, anywhere in the world, for Seller's Trademarks or any other Trademark that is similar to Seller's Trademarks or that incorporates Seller's Trademarks;

(e) use any mark, anywhere, that is confusingly similar to Seller's Trademarks;

(f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Goods) or any Seller Trademark;

(g) misappropriate any of Seller's Trademarks for use as a domain name without prior written consent from Seller; or

(h) alter, obscure, or remove any of Seller's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Goods), marketing materials, or other materials that Seller may provide.

### 13. Confidentiality.

13.1 Scope of Confidential Information. From time to time during the Term, Seller (as the "**Disclosing Party**") may disclose or make available to Buyer (as the "**Receiving Party**") information about its business affairs, goods and services, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information. Such information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," is collectively referred to as "**Confidential Information**" hereunder. Notwithstanding the foregoing, Confidential Information does not include information that at the time of disclosure:

(a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 13 by the Receiving Party or any of its Representatives;

(b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;

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(c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party;

(d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or

(e) is required to be disclosed pursuant to applicable Law.

13.2 Protection of Confidential Information. The Receiving Party shall, for five (5) years from disclosure of such Confidential Information:

(a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

(c) not disclose any such Confidential Information to any Person, except to the Receiving Party's Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

The Receiving Party shall be responsible for any breach of this Section 13 caused by any of its Representatives. On the expiration or earlier termination of this Agreement, or at the Disclosing Party's written request, the Receiving Party and its Representatives shall, pursuant to Section 6.3(d), promptly return or destroy all Confidential Information and copies thereof that it has received under this Agreement].

14. Tooling. All Tooling used to manufacture the Goods is owned by Seller ("**Seller Tooling**"). Buyer has no right, title, or interest in or to any of the Seller Tooling.

15. Access and Audit Rights. Buyer hereby grants Seller access to Buyer's operations, facilities, books and records, correspondence, writings, drawings, and receipts related to the Goods for the purpose of ensuring Buyer's compliance with the terms of this Agreement. Buyer

shall maintain all pertinent books and records for a period of three (3) years after expiration of the Term. Buyer shall also cooperate fully with Seller with respect to all reasonable requests of Seller relating to the foregoing access rights.

17. Miscellaneous.

17.1 Further Assurances. Upon Seller's reasonable request, Buyer shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

17.2 Relationship of the Parties. The relationship between Seller and Buyer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

17.3 Entire Agreement. This Agreement, including and together with the Basic Purchase Order Terms and any related exhibits and schedules, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

17.4 Survival; Statute of Limitations. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of this Agreement for a period of twelve (12) months after such expiration or termination; and (b) any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of twelve (12) months after such expiration or termination. All other provisions of this Agreement will not survive the expiration or earlier termination of this Agreement. Notwithstanding any right under any applicable statute of limitations to bring a claim, no Action based upon or arising in any way out of this Agreement may be brought by either Party after the expiration of the applicable survival or other period set forth in this Section 17.4 and the Parties waive the right to file any such Action after the expiration of the applicable survival or other period; provided, however, that the foregoing waiver and limitation do not apply to the collection of any amounts due to Seller under this Agreement.



17.5 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this section). All Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

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Notice To Seller:

3358 MONIER CIR, SUITE 3  
Or Seller's then principal place of business  
PHONE: (916)750-4677  
E-mail: [RYAN@CRAFTMASTERSTAINLESS.COM](mailto:RYAN@CRAFTMASTERSTAINLESS.COM)  
DAVE@CRAFTMASTERSTAINLESS.COM  
Attention: RYAN HAYMART OR DAVE SILVA

Notice to Buyer: [BUYER ADDRESS]

Facsimile: [FAX NUMBER]

E-mail: [E-MAIL ADDRESS]

Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

17.6 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as

amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

17.7 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

17.8 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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17.9 Amendment and Modification. No amendment to this Agreement is effective unless it is in writing and signed by each Party.

17.10 Waiver.

(a) No waiver under this Agreement is effective unless it is in writing and signed by the Party waiving its right.

(b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.

(c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission, or course of dealing between the Parties.

17.11 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or

otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer's rights under Section 4.4, Section 4.6, Section 9.4, and Section 10 are Buyer's exclusive remedies for the events specified therein.

17.12 Equitable Remedies. Buyer acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations under Section 13 would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Buyer of any such obligations, Seller shall, in addition to any and all other rights and remedies that may be available to Seller at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Buyer agrees that Buyer will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 17.12.

17.13 Assignment. Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Seller may assign any of its rights or delegate any of its obligations to any Person acquiring all or substantially all of Seller's assets. Any purported assignment or delegation in violation of this Section is null

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and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

17.14 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

17.15 No Third-Party Beneficiaries. Except as expressly set forth in the second sentence of this Section 17.15, this Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns, and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

17.16 Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a "**Dispute**"), shall be submitted for negotiation and resolution to the Seller (or to such other person of equivalent or superior position designated by Seller in a written Notice to Buyer) and the Buyer (or to such other person of equivalent or superior position designated by

Buyer in a written Notice to Seller), by delivery of written Notice (each, a "**Dispute Notice**") from either of the Parties to the other Party. If the Parties are unable to resolve any Dispute within ninety (90) days after delivery of the applicable Dispute Notice, either Party may file suit in a court of competent jurisdiction in accordance with the provisions of Section 17.18 and Section 17.19 hereunder.

17.17 Governing Law. This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by and construed in accordance with, the Laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

17.18 Choice of Forum. Each Party irrevocably and unconditionally agrees that it shall not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all contemplated transactions, in any forum other than name of United States District Court for the Eastern District of California.

Or the courts of the State of California sitting in the County of Sacramento, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in United States District Court for the Eastern District of California or the courts of the State of California sitting in the County of Sacramento. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

17.19 Waiver of Jury Trial. Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including

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any exhibits, schedules, attachments, and appendices attached to this Agreement, or the transactions contemplated hereby.

17.20 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

17.21 Force Majeure. No Party shall be liable or responsible to the other Party, or 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 ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, or catastrophes such as epidemics or pandemics, 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. The Impacted Party shall give notice within seven (7) 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 [15] days following written notice given by it under this Section 17.21, [Buyer/Seller/either Party/the other Party] may thereafter terminate this Agreement upon [15] days' written notice.

17.22 No Public Announcements or Trademark Use. Unless expressly permitted under this Agreement, Buyer shall not:

(a) make any statement (whether oral or in writing) in any press release, external advertising, marketing, or promotion materials regarding the subject matter of this Agreement, [Seller/the other Party] or its business unless:

(i) it has received the express written consent of Seller, or

(ii) it is required to do so by Law [or under the rules of any stock exchange to which it is subject].

(b) use Seller's Trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of Seller.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

Craftmaster Stainless, INC

By \_\_\_\_\_

Name:

Title:

[BUYER NAME]

By \_\_\_\_\_

Name:

Title:



