

FRENZELIT, INC. TERMS AND CONDITIONS OF SALE

NOTICE: THIS TRANSACTION BETWEEN FRENZELIT, INC. (“**SELLER**”) AND BUYER, AND ALL DOCUMENTS PERTAINING TO IT, IS SUBJECT TO AND CONDITIONED UPON THESE TERMS AND CONDITIONS OF SALE (“**TERMS**”) AND THESE TERMS ARE INCORPORATED BY REFERENCE INTO AND ARE A PART OF ALL TRANSACTIONS BETWEEN SELLER AND BUYER.

1. Order Process; Acceptance; Additional or Conflicting Terms.

(a) “**Sales Documents**” include any quotation, proposal, statement of work, order confirmation, order acceptance and invoice issued in writing and signed (including via email or electronically) by an authorized representative of Seller. Buyer’s purchase of Products (defined below) from Seller, and any Services (defined below) Seller provides, will be governed solely by these Terms and the Sales Documents (collectively, the “**Contract**”). In no event will Buyer’s terms in any purchase order, service request, commercial document, communication or otherwise apply to, nor will Buyer’s proposed additional or different terms modify, a Contract unless Seller expressly includes Buyer’s specific terms in the Sales Documents. **Seller hereby objects to and rejects any additional or different terms or conditions proposed by Buyer or contained in any purchase order, commercial document or other correspondence from Buyer, regardless of any knowledge Seller may have of such terms, and such terms will not bind Seller or be applicable to the transaction (even if Buyer’s purchase order is referenced in the Sales Documents).** If any of these Terms conflict with the Sales Documents, the specific terms in the applicable Sales Documents will prevail over these Terms. The applicable terms of any revised or later Sales Document will control over such terms in a prior, similar Sales Document. No other terms or changes, modifications, amendments or waivers of any terms in a Contract will apply to Seller unless in writing and signed by an authorized officer of Seller.

(b) All sales of products and any other goods sold by Seller (individually, “**Product**” and collectively, “**Products**”) and any services performed by Seller (“**Services**”) are contracts entered into in North Carolina and then only in accordance with the Sales Documents.

(c) Seller will sell Products and provide Services to Buyer in the quantities and at the times set forth in the Sales Documents. Buyer may order Products by submitting written purchase orders that reference Product(s), quantity per Product, and requested delivery date. All orders and requests submitted to Seller for Products or Services are subject to acceptance by Seller and only the terms of the Sales Documents will apply. Seller’s acceptance may be in writing (such as via an order confirmation), including electronically or via email, or by delivery of Products to Buyer or performance of Services for Buyer.

2. Price; Payment.

(a) All prices for Products and Services will be as specified in writing by Seller in the Sales Documents and may be changed by Seller at any time. If no price has been specified in the Sales Document, the price will be Seller’s standard price in its catalogs or price lists in effect at the time of delivery or performance, as the case may be. Unless expressly specified otherwise in the Sales Documents, Buyer will also reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of Services.

(b) The prices do not include any sales, use, personal property, excise, transfer or other tax, nor any duties or assessment, arising out of or related to Products, Services or their respective purchase and sale which may be imposed by any governmental authority, all of which will be the obligation of, and paid by, Buyer. In the event that Seller pays any such tax, duty or assessment, Buyer will reimburse Seller in accordance with the terms of **Section 2(c)** below. Buyer is responsible for obtaining and providing to Seller any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability.

(c) Unless expressly specified otherwise in the Sales Documents, Buyer will pay all amounts due in full, and without deduction or setoff immediately upon Buyer’s receipt of the invoice, regardless of any dispute or controversy that may arise. Buyer will make all payments under a Contract by **wire transfer, cash, credit card, check**, or such other payment method as Seller may specify from time to time and **in U.S.**

dollars. Buyer is responsible for all credit card fees, wire transfer and other bank fees. The date of payment will be the date Seller receives payment in full. If at any time, in its sole discretion, Seller has any doubt or concern as to Buyer’s financial standing or ability to perform its obligations, Seller may decline to make shipments or perform Services, except upon receipt of a deposit or other satisfactory security or cash. Buyer will not withhold, offset or recoup any amounts it owes to Seller under a transaction, Contract, or otherwise against any other amount Buyer claims Seller owes to it, regardless of any dispute that may arise between the parties.

(d) If Buyer fails to make any payments as and when due or otherwise defaults (i) interest will accrue from the date the payment was due until payment is received in full at the lower of **1.5% per month** or the maximum amount allowed by applicable law and (ii) Seller may take any or all of the following actions: (1) suspend performance; (2) terminate a Contract for default; (3) require Buyer to pay the full Contract price and any interest, fees and other charges immediately; and (4) take any other actions or pursue any other rights or remedies under applicable law. Buyer will further reimburse Seller for all costs incurred in collecting any late payments, including attorneys’ fees and expenses. Failure by Seller to charge interest on late payments or to exercise its other rights and remedies will not be construed as a waiver of any other legal or equitable remedies.

3. Termination or Suspension.

Without limiting Seller’s other rights and remedies available under a Contract, applicable law or in equity, Seller may suspend or terminate performance and delivery, if: (a) Buyer fails to perform or observe any other obligations under a Contract between Seller and Buyer; (b) there is a change in the control or management of Buyer; (c) Buyer ceases to conduct its operation in the normal course of business; (d) Buyer becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; or (e) Buyer makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Buyer’s property.

4. Delivery.

Unless otherwise stated in Seller’s Sales Documents, all deliveries of Products are Ex Works (Incoterms 2010) Seller’s facility located in Lexington, North Carolina, or such other location as designated by Seller (“**Delivery Point**”). Buyer will take delivery of Products when Products have been made available at or delivered to the Delivery Point. Delivery shall be deemed to have been completed at **9:00 AM EST on the third business day** following the day on which Seller notified Buyer that the Products were ready for pickup at the Delivery Point. The prices do not include any transportation, insurance, installation, training setup, storage or packaging costs and Buyer is responsible for all such costs. Packing is at Seller’s sole discretion, and packing charges will be calculated at a net cost price. Seller may make partial or early deliveries. Notwithstanding any requested delivery dates by Buyer, the delivery date in Seller’s order confirmation will control. Any shipping or delivery schedule, quotation, forecast or commitment is only an estimate and Seller will not be liable for any delay or failure to deliver all or any part of any order for any reason. Seller shall not be liable for any delay in the delivery of Product or performance of Services caused by a Force Majeure Event, or due to Buyer’s or its affiliates, contractors or agents fault, or Buyer’s failure to provide Seller with adequate delivery instructions, or any other instructions that are relevant to the delivery of Products or performance of Services. Seller will not be responsible for any damage to Products caused by a carrier and Buyer’s sole recourse for such damage will be against the carrier. If Buyer does not take delivery of the Products within three (**3**) **business days** after Seller notified Buyer that the Products are ready for pickup at the Delivery Point, Seller may store the Products until delivery takes place, and Buyer shall be liable for all related costs and expenses (including insurance).

5. Acceptance.

Buyer will inspect all Products and Services immediately upon their delivery or performance, and prior to use or resale. Immediately and no later than **five (5) days** after delivery of a Product or completion of a Service, Buyer must give written notice to Seller of any claim by Buyer based upon any alleged shortage, defect or discrepancy of Products sold or Service provided, and such notice must indicate the basis of the claim in detail. Buyer's failure to comply within the time specified in this **Section 5** constitutes irrevocable acceptance by Buyer of Products delivered or Services provided and will bind Buyer to pay to Seller the full price of such Products or Services. Products sold will not be returned without Seller's prior written consent and then only in accordance with Seller's then return policies (for example, Buyer may be required to package the Products for their return).

6. Limited Warranty.

(a) Subject to the provisions in these Terms and in the Sales Documents, Seller warrants that (i) when Products are delivered to Buyer, **Products will materially comply with Seller's published specifications for such Products**, and (ii) when Services are performed, Services will have been performed using personnel of required skill, experience, and qualifications and in a workmanlike manner in accordance with generally recognized industry standards for similar services. The warranties provided in **Sections 6(a)(i)** and **6(a)(ii)** are hereinafter referred to collectively as "**Limited Warranty**." The Limited Warranty will apply for a period of twelve (**12 months**) after the delivery date of a Product and for **thirty (30) days** after the completion of Services ("**Limited Warranty**"). Unless expressly specified otherwise in the Sales Documents, the Limited Warranty shall expire on the earlier of (i) twelve (**12 months**) after the delivery date of a Product, (ii) immediately upon Products being used or otherwise processed by Buyer or any third party, or **thirty (30) days** after completion of Services (each, a "**Warranty Period**"). The Limited Warranty is conditioned upon Buyer following the claims process outlined in **Section 8** below, which Seller may change from time to time. The Limited Warranty is limited to the Buyer only and is non-transferable. In the event of a Product resale by Buyer, Buyer is solely responsible for any and all warranty and other claims resulting from Products and for any representations or warranties made by Buyer to its customers and any end-customers. Buyer will not refer to Seller, including the Limited Warranty, in any manner in connection with its resale of Products. Buyer has tested the Products and is solely responsible for proper selection of Products and their use and application.

(b) Any depictions, projections, diagrams, samples, drawings, illustrations, and other descriptions or other information from Seller or its affiliates, applicable to Products, Services, or a Contract, whether included in catalogs, datasheets or otherwise, are descriptions or approximations only, and do not constitute any specifications, representations, warranties, or guarantees, implicitly or explicitly.

(c) EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY PROVIDED IN **SECTION 6(a)** ABOVE, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, STATUTORY OR OTHERWISE, REGARDING OR RELATING TO PRODUCTS, SERVICES OR THIS CONTRACT, AND SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO PRODUCTS AND SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

7. Limited Warranty Exclusions.

The Limited Warranty does not cover: (a) damage to Products during or after delivery; (b) normal wear and tear or items that are expendable; (c) user error; (d) use under circumstances exceeding Seller's specifications or limitations or contrary to any instructions or information from Seller; (e) unauthorized use, or unauthorized or improper installation, repair, modification or alteration; (f) improper storage; (g) Products sold based on Buyer's instructions, design, plans or other non-Seller specifications; and (h) accidents. The Limited Warranty on the Products is

subject to marginal, technically unavoidable discrepancies in quality, color, touch, size, weight or design, and do not confer any right of Buyer to make a Warranty Claim. Buyer shall be solely responsible for the correct use, application, and circumstances in which Seller's Products are used, modified or applied, alone or in conjunction with other products.

8. Buyer's Limited Warranty Claims.

Buyer must give Seller detailed written notice of any Products or Services which Buyer alleges do not conform to the Limited Warranty, specifying the alleged non-conformities (each, a "**Warranty Claim**"). Any Warranty Claim must be made within fifteen (15) days after Buyer is aware of the alleged non-conformity and, in any event, within the Warranty Period. The Limited Warranty expires when, and no claims may be made after, the Warranty Period ends. Buyer will follow Seller's then current Warranty Claims process. At Seller's request, Buyer will return, at Buyer's expense, any alleged non-conforming Product to a location designated by Seller for Seller to evaluate and verify the alleged non-conformity. For any Products which Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Distributor's sole and exclusive remedy, will be, at Seller's choice, to repair or replace such non-conforming Product, or to refund the purchase price for such non-conforming Product. For any Services which Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, will be, at Seller's choice, to correct or repeat such Services.

9. Limitation of Liability.

(a) SELLER'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO A CONTRACT, OR PRODUCTS, OR SERVICES, OR THE USE (OR INABILITY TO USE) ANY PRODUCTS OR SERVICES, WHETHER IN WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT BUYER PAID TO SELLER FOR THE PARTICULAR PRODUCTS OR SERVICES AT ISSUE.

(b) SELLER IS NOT RESPONSIBLE FOR ANY INJURY OR DAMAGE RESULTING FROM (I) BUYER'S DETERMINATION AS TO THE SUITABILITY OR FITNESS OF THE PRODUCT OR SERVICES FOR A PARTICULAR PURPOSE, OR (II) THE USE OR APPLICATION OF THE PRODUCTS OR SERVICES, ALONE OR IN CONJUNCTION WITH OTHER PRODUCTS, OR DEVICES.

(c) IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE THEORY OF RECOVERY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Indemnity.

(a) Buyer agrees to indemnify, defend and hold harmless Seller and its affiliates, and their respective officers, directors, employees and agents, from any and all claims, actions, suits, damages, liabilities, costs, obligations, and expenses (including attorneys' fees and expenses) arising out of or relating to (i) use of, modification of, or application of the Products alone or in conjunction with other products, (ii) any processing or modification of Products in any manner by Buyer, its employees, or agents, (iii) violation, misappropriation, or infringement of any patent, trademark, copyright or other intellectual property rights of any person or entity arising out of or related to compliance with Buyer's design, specifications or instructions or Buyer's use of a Product with other goods, (iv) use of a Product or Services inconsistent with or exceeding Seller's specifications, limitations or recommendations, (v) any breach by Buyer of any terms of the Contract, and (vi) any violation of law or regulation, intentional or negligent act, or misrepresentation by Buyer, its employees or agents.

(b) Buyer shall adhere to domestic and international customs regulations if the Products are resold. If the Products are altered, further processed or incorporated into products or devices, Buyer shall be liable for all resulting damages suffered by Seller, Buyer's clients or third parties.

Buyer shall indemnify and hold Seller and its affiliates harmless from all claims, lawsuits, losses, expenses and attorneys' fees arising out of or relating to (i) Buyer's failure to comply with any domestic or international customs regulations relating to Buyer's resale of any Products and (ii) any claims, including personal injury or property damage, arising out of or resulting from alteration, further processing or incorporation of the Products into products.

11. Insurance.

Buyer will maintain commercial general liability, personal injury and property damage insurance policies, including wrongful death coverage, in reasonable amounts consistent with industry standards with a nationally recognized insurance company. All such insurance policies will name Seller and its affiliates as additional insureds, and will require at least ten (10) days prior written notice to Seller of any modification, cancellation or termination of any insurance policies. Buyer will require its insurer(s) to waive all rights of subrogation against Seller, its affiliates and their insurers. Buyer will immediately deliver to Seller a certificate of insurance meeting the requirements listed in this **Section 11**. In addition, upon request by Seller from time to time, Buyer will deliver to Seller a current certificate of insurance and a complete copy of the foregoing insurance policies.

12. Confidentiality; Intellectual Property.

Buyer may have access to certain proprietary and/or confidential information and to other property (including trademarks) owned or used by Seller and its affiliates, whether in oral, written, electronic or other form or media. Buyer acknowledges and agrees that all such proprietary and/or confidential information and other property will remain the property of Seller and its affiliates and that, upon Seller's request, Buyer will return or destroy all proprietary and/or confidential information (in any and all forms) and will return to Seller all such other property of Seller and its affiliates. Buyer will not, without Seller's prior written consent (which consent may be withdrawn at any time), disclose to any third person, entity or organization any aspect of any such proprietary and/or confidential information, and will not use, except internally to perform its obligations under a Contract, any such proprietary and/or confidential information or other property of Seller or its affiliates. All intellectual property rights arising out of or in connection with the Services shall be the sole and exclusive property of Seller and its affiliates.

13. Export Controls.

All sales of Products and provision of Services are subject to and conditioned upon Seller or its affiliates obtaining any necessary export control licenses for such Products or Services, if applicable, and Seller may cancel the transaction with Buyer if it does not obtain any necessary export license. Exporting certain Products outside of the United States of America and European Community may be subject to export control laws. Once the Products have been delivered to Buyer in the United States of America or European Community, Buyer is responsible for complying with all applicable export control laws and regulations, including without limitation obtaining any export licenses for the export of such Products outside the United States of America or the European Community. If Buyer wishes for Seller to delay the delivery of Products until any necessary export licenses are obtained, Buyer shall inform Seller as soon as practicable. Buyer will be responsible for any storage costs in connection with such delay.

14. Force Majeure.

Seller will not be liable, and its performance (and delivery dates and delivery periods) will be deemed extended, for any delays or failure to perform directly or indirectly resulting from events and causes beyond its reasonable control, including accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, delays in obtaining or the inability to obtain labor, materials, Products or Services through usual sources at normal prices, or the failure of Seller's suppliers to furnish parts or other goods.

15. Relationship.

Seller is an independent contractor. Nothing in a Contract will be construed as creating a partnership, association or joint venture between the parties. Buyer will not have the right to bind or make representations on behalf of Seller. No employee of either party will be deemed to be an employee of the other party.

16. Limitation on Actions.

Buyer must commence any action or proceeding that arises out of or relates to a Contract, Seller's breach of a Contract or Products or Services within the earlier of: (a) **one (1) year** after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. Any action or proceeding Buyer does not commence within such period will be forever barred. The Contract contains Buyer's sole and exclusive remedies relating to a Contract or Products or Services regardless of the theory of recovery.

17. Choice of Law; Venue.

The transaction and Contract, and any matter, dispute or controversy arising out of or relating to the transaction, Contract or Products or Services will be governed by North Carolina law, excluding its conflicts of law principles, and the provisions of the 1980 United Nations Convention on the International Sale of Goods ("**UNCISG**") are expressly excluded. Buyer and Seller agree that the North Carolina State Courts and the United States District Court for the Western District of North Carolina, will constitute the sole and exclusive judicial forum(s) and venue and, therefore, will have sole and exclusive jurisdiction over the adjudication and resolution of any and all matters, disputes and controversies arising out of or relating to a transaction, Contract or Products or Services; except with respect to Seller's claim or any action instituted by Seller (a) for equitable or comparable relief including an action for temporary or permanent injunctive relief, (b) for recovery of possession of Products, such as replevin, claim and delivery, attachment or the like or (c) to collect any amounts owed by Buyer.

18. Miscellaneous.

A Contract contains the entire agreement of the parties relating to the subject matter and supersedes all previous and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral. A Contract will be binding on, and will inure to the benefit of, the parties and their respective successors, heirs and permitted assigns. Any consent, approval or agreement required or allowed by Seller may be given or withheld by Seller in its sole discretion and must be in writing and signed by an authorized representative of Seller to be effective. No delay or failure by Seller to exercise or enforce any of its rights or remedies under a Contract will be construed as a waiver of such rights or remedies. The express waiver of any right or remedy in a particular instance will not constitute a waiver of that right or remedy in any other instance. If any provisions of these Terms or any Sales Documents are held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision(s) will be deemed to be severable and these Terms and any Sales Documents will then be construed and enforced in accordance with the remaining provisions. As used herein, the words "including", "include" and "includes" will not be deemed to be limiting. Buyer may not assign all or any portion of its rights or obligations under a Contract without Seller's prior written consent, and any attempted assignment without that consent will be void.