SMT Corp. Sales Terms & Conditions (US)

1. PRELIMINARY

1.1 Definitions:

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

“Goods” means the Goods which the Seller is to supply in accordance with these Conditions and as specified on the order form appearing on the face hereof. “Seller” means SMT Corporation having its principal place of business in Connecticut, U.S.A.
“Conditions” means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Buyer and Seller.
“Contract” means the Contract for the purchase and sale of Goods.

1.2 Acceptance:

Acceptance by Seller of Buyer’s purchase order for all Goods to be sold by Seller to Buyer is conditioned on Buyer’s agreement to the following terms and conditions. Buyer’s receipt of the Goods shall be deemed an acceptance of these terms and conditions. All orders are subject to acceptance by an authorized representative of Seller, evidenced by Seller’s written order acknowledgment addressed to Buyer. If such terms and conditions are not acceptable, Buyer must notify Seller within five (5) days from the date hereof, otherwise. Buyer agrees that the following terms and conditions shall be the exclusive terms and conditions of sale except as otherwise expressly agreed to in writing by Seller.

1.3 Headings:

The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. QUOTATIONS

All quotations by the Seller are valid for 30 days and are subject to change or withdrawal without prior notice to the Buyer unless otherwise specified in such quotation. All quotations made by Seller are subject to the availability of the goods offered. Quotations will be made subject to approval by the Seller of the Buyer’s credit for the sale of Goods pursuant to a purchase order submitted to the Seller by the Buyer. The Seller shall not have any obligation to the Buyer with respect to Goods until any one of the following have occurred: a) the Buyer shall have signed and delivered its purchase order to the Seller and the Seller shall have accepted such order by issuing a written order acknowledgment to the Buyer or b) in the event that the Buyer does not issue a purchase order to Seller, the Seller shall have issued its price quotation for Goods to Buyer, and these terms and conditions of sale of the Seller shall apply to the sale of Goods.

2.2 Compliance

This order may contain licensable technical data covered under the International Traffic in Arms Treaty (ITAR). Prior to any export or release to any non-U.S. person or entity of licensable data, you must obtain export approval from the U.S. Dept. of State, Office of Defense Trade Controls. If exporting, it is the Buyer's sole responsibility to determine the status of Goods for export compliance.

3. Prices; Terms of Payment
3.1 Prices:

Price of the Goods as in effect at the time of delivery shall apply unless otherwise stated on an effective outstanding price quotation issued by the Seller to the Buyer. Unless otherwise stated on the face hereof, all prices are Ex Works the carrier from the point of shipment with cost and freight allowed to the point of delivery to the carrier. The method and agency of transportation and the routing will be designated by the Seller. In the event the Buyer requests alternative shipment or routing, extra packing, shipping and transportation charges thereby resulting will be added to the Buyer's account.

3.2 Terms of Payment:

Unless otherwise stated on the face hereof, all payments shall be (a) C.O.D. (b) paid in U.S. Dollars. If shipment of the Goods are delayed for any cause, payment shall become due from the date on which the Seller is prepared to make a shipment of the Goods, and storage thereof shall be at Buyer's risk and expense. If, in the sole judgment of the Seller, the financial condition of the Buyer at any time does not justify the continuance of shipment of the Goods on the terms of payment specified herein, the Seller may require full or partial payment in advance of the delivery of the Goods. If such circumstances occur, the Seller may unilaterally elect to cancel this Contract and all other contracts then existing between the Buyer and the Seller, and the Seller shall have the right to cause all amounts owed to the Seller from the Buyer to become immediately due and payable unless the Buyer shall promptly supply the Seller with adequate collateral security for such amounts due which security is reasonably satisfactory to the Seller.

4. DELIVERY
4.1 Force Majeure:

The Seller shall not be responsible for any delay (whether material or not) in, or failure of, the shipment or delivery of Goods due to any occurrence commonly known as Force Majeure, including, without limitation, delays arising out of acts of God, acts of government, agency or instrumentality thereof (whether fact or law), acts of a public enemy, riots, embargoes, strikes or other concerted acts of workmen (whether of the Seller or other persons), casualties or accidents, deliveries of materials, transportation or shortage of cars, trucks, fuel power, labor or materials, or any other causes, circumstances or contingencies within or without the United States of America, which are beyond the Seller's control or otherwise prevent or hinder the delivery of the Goods (without regard to the availability of the Goods otherwise in the market) or the performance by the Seller of any of its obligations hereunder. If any of the events occur, the

delivery of the Goods or the performance by the Seller of its obligations, as the case may be, may at the Seller's option, upon written notice to the Buyer of the occurrence of such event, be either canceled or deferred without liability of the Seller until such time as it shall elect to deliver the Goods and perform such obligations.

4.2 Delays:
Where a specific shipping date is not designated on the face hereof or in a subsequent writing signed by the Seller, the Seller shall not be responsible for any delay in filling those orders, nor shall seller be liable for any loss or damages resulting from such delays.

5. DUTIES AND TAXES
All taxes (other than income taxes), imposts or duties levied upon the Goods by or payable to any federal, state municipal or other governmental authority upon the purchase price payable hereunder shall be chargeable to and paid by the Buyer, whether such taxes, imposts or duties are payable by the Seller or otherwise. All quotations for the sale of Goods shall be exclusive of any such taxes, imposts or duties.

6. RISK OF LOSS AND PASSAGE OF TITLE
6.1 Risk of Loss:

Risk of loss of Goods shall pass to the Buyer upon delivery by the Seller of the Goods to the carrier at the point of shipment, irrespective of whether the Seller or the Buyer is obligated to pay the cost of shipment. All costs, if any, for insurance on the Goods shall be at the expense of the Buyer. If the Seller has agreed to pay the costs of shipment of the Goods, any increase in freight charges between the point of shipment to the point of destination effective after the date of shipment in excess of the freight charges in effect on the date of delivery by the Seller to the freight carrier shall be for the account of the Buyer, whether such charges are paid or payable by the Seller or otherwise. The Buyer agrees to submit all complaints with respect to shipping damage to the Goods directly to the carrier within any time periods specified for such purpose.

6.2 Passage of Title:

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions, the title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due. Until such time as the title in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to return the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7. WARRANTIES

THE SELLER GIVES NO WARRANTY, EXPRESS OR IMPLIED AS TO DESCRIPTION, QUALITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, PRODUCTIVENESS, OR ANY OTHER MATTER, WHICH EXTENDS BEYOND THE DESCRIPTION OF THE GOODS STATED ON THE FACE HEREOF. CLAIMS THAT THE GOODS ARE NON-CONFORMING SHALL BE DEEMED WAIVED AND RELEASED BY THE BUYER UNLESS MADE IN WRITING WITHIN TEN (10) DAYS AFTER ARRIVAL OF THE GOODS AT THE POINT OF DESTINATION TO WHICH THE GOODS ARE TO BE SHIPPED. THE SELLER MAY CURE ANY DEFECT AS TO THE CONFORMITY OF THE GOODS BY REPLACEMENT THEREOF WITH CONFORMING GOODS.

8. REMEDIES

In addition to all rights Seller may have with respect to the sale of Goods, the Seller shall have the right at any time for credit reasons, because of Buyer's default under, or in repudiation of, this Contract or any other Contract between the Seller and the Buyer, to withhold shipment of the Goods, in whole or in part, and to recall Goods in transit, retake the same and repossess all Goods which may be stored with the Seller for the Buyer's account, without the necessity of taking any other action. The Buyer agrees that all Goods so recalled, retaken, or repossessed shall become the absolute property of the Seller; provided that the Buyer is given full credit therefore and that the Seller may offset against any indebtedness owed by it to the Buyer any other amounts then owed by the Seller to the Buyer. The foregoing shall not be construed as limiting in any manner any of the rights or remedies of the Seller arising under the Connecticut Uniform Commercial Code or any other applicable law as in effect on the date hereof, which are available to the Seller upon any default by the Buyer of any of the terms or conditions of this Contract.

9. CONSEQUENTIAL DAMAGES

IN NO EVENT SHALL SELLER BE LIABLE TO THE BUYER FOR LOSS OF PROFITS, LOSS OF USE, OR DAMAGE OF ANY KIND BASED UPON A CLAIM FOR BREACH OF WARRANTY OR FOR BREACH OF CONTRACT, INCLUDING WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES OR INCIDENTAL DAMAGES, EVEN IF SUCH LOSS OR DAMAGE IS CAUSED BY SELLER'S NEGLIGENCE OR OTHER FAULT.

10. CANCELLATION

Acceptance of an order by Seller shall be an irrevocable sale and is non-cancelable by Buyer. Any cancellation must be accepted by Seller in writing, and Seller shall have the right to retain all amounts paid to it by Buyer as a nonrefundable deposit against payment of the purchase price therefor without further liability of Seller to Buyer. Buyer will be responsible for all fees and expenses (including reasonable attorneys' fees and expenses) incurred by Seller as a result of the cancellation of any order.

11. CLAIMS; NOTICE OF DEFECTS

In the event the Goods to be delivered hereunder are claimed to be defective, the Seller shall be given reasonable notice of such defect and an opportunity for inspection of such Goods, or upon the request of Seller, it shall be given immediate access to such Goods or return the Goods to

Seller for inspection at Buyer's expense. Buyer shall carefully inspect all goods promptly on receipt from the carrier and report any quality or quantity shortages or defects to the Buyer within ten (10) days of receipt thereof. In any event, all claims against the Seller arising out of the sale of the Goods shipped hereunder must be made within ten (10) days after receipt by the Buyer. The Seller offers buyers a minimum 1 year warranty on GOODS ONLY. The Seller represents the goods to meet the original manufacturers published specifications at the time of original manufacturing. The goods are not represented to function in ANY application that exceeds the original manufacturers published specifications. All claims for defect must be made in writing and shall be supported with commercially acceptable failure analysis. Buyer is obligated to provide Seller with information requested that is relevant to a defect claim made by Buyer. The Seller shall be obligated only to replace defective Goods or to allow credit for such Goods, at the Seller's sole option, and shall not be obligated to pay for any transportation or other fees, costs or expenses, or for any losses or damages of any kind. The Sellers total liability related to the sale of said Goods contained herein shall not exceed the stated value of the goods on this order. Pursuant to Paragraph (9) Seller shall not be liable for any additional costs. The terms of this order shall supersede any conflicting terms in the Buyers Terms and Conditions of Sale regarding cancellation return of the Goods or liability.

12. PATENTS

The Seller does not assume any patent responsibility whatsoever, and the Buyer shall indemnify and hold harmless the Seller from all claims arising out of any patent infringement or claims thereof pertaining to any patents relating to the use of the Goods in conjunction with other goods, products or materials sold by the Buyer to the Seller. The Seller shall control the conduct of any suit pending or threatened, claim or other proceeding arising out of the alleged infringement of the Goods of any patent or other right of another person.

13. AMENDMENTS

None of the terms and conditions of the sale of the Goods may be amended in any respect unless consented to in writing and signed by an authorized representative of the Seller.

14. ASSIGNABILITY

The terms and conditions of this Contract shall be binding upon and inure to the benefit of the successors and assigns of Seller and Buyer, and may be assigned to any successor organization or affiliate of the Seller without written consent of the Buyer, but shall not be assignable by the Buyer without prior written consent of the Seller.

15. WAIVER

The failure or delay of the Seller to exercise any of its rights hereunder shall not be construed to be a waiver of any such rights. No waiver by the Seller of any breach of this Contract shall be effective as against the Seller unless the Seller shall have waived such breach in writing, and no waiver by the Seller of one breach hereunder shall be deemed to be a waiver by the Seller of any other breach not so waived.

16. GOVERNING LAW

The respective rights and obligations of the Buyer and the Seller arising out of the sale of Goods hereunder shall be governed by and construed under the laws of the State of Connecticut.

17. SUBMISSION TO JURISDICTION

The Buyer irrevocably submits to the jurisdiction of any Connecticut court of competent jurisdiction or federal court sitting in the State of Connecticut, which has jurisdiction over the subject matter of any suit, action or proceeding arising out of or relating to the sale of the Goods. The Buyer irrevocably waives any objection which it may have or may hereafter have to the laying of the venue of any such suit, action or proceeding commenced in any such court and any claim that any such suit, action or proceeding commenced in such court has been commenced in any inconvenient forum. The Buyer irrevocably designates and appoints the Secretary of State of the State of Connecticut as its authorized agent to accept and acknowledge on behalf of the Buyer service of process which must be served upon the Buyer by the Seller in any such suit, action or proceeding

18. NOTICES; COMMUNICATIONS

All notices and other communications to be given to the Buyer or the Seller hereunder with respect to the Goods shall be given either in writing by certified mail, express courier (such as Federal Express) or hand delivered to an officer of either the Buyer or the Seller, as the case may be, at their respective addresses as stated on the reverse side hereof.