



## GENERAL TERMS & CONDITIONS OF SALE

The following Terms and Conditions are attached to and form a part of the Purchase Order entered into by and between HIMA AMERICAS, Inc. ("HIMA") and the Purchase Order originating entity ("Buyer").

### 1. SCOPE

HIMA will provide Buyer with equipment, software, engineering, technical or field services ("Goods") expressly agreed to in the Purchase Order and as further described in these Terms and Conditions.

### 2. TERM

These Terms and Conditions shall be in effect for the period stated in the Purchase Order.

### 3. WARRANTY

(a) HIMA warrants that on the date of shipment the goods are of the kind and quality described herein and are free of non-conformities in workmanship and material. HIMA does not warrant that the operation of the software, hardware, parts and equipment will be uninterrupted or error free. This warranty does not apply to goods delivered by HIMA but manufactured by others.

(b) The sole obligation of HIMA under this warranty shall be to replace, repair, refurbish, overhaul or rebuild any item of equipment covered by the Purchase Order, provided such defects are promptly reported to HIMA within the warranty period and, upon investigation by HIMA, determined to be defective. Replacements, repairs, overhauls or rebuilds shall not interrupt or prolong the term of the warranty. HIMA's obligation to repair or replace shall be in effect for a period of one (1) year from initial operation of the goods but not more than eighteen (18) months from HIMA's shipment of the goods, provided Buyer has sent written notice within that period of time to HIMA that the goods do not conform to the above warranty. Repaired and replacement parts shall be warranted for the remainder of the original period of notification set forth above. At its expense, Buyer shall remove and ship to HIMA any such nonconforming items and shall reinstall the repaired or replaced parts. Buyer shall grant HIMA access to the goods at all reasonable times in order for HIMA to determine any nonconformity in the goods. HIMA shall have the right of disposal of items replaced by it. If HIMA is tenable or unwilling to repair or replace, or if repair or replacement does not remedy the nonconformity, HIMA and Buyer shall negotiate an equitable adjustment in the contract price, which may include a full refund of the contract price for the nonconforming goods.

(c) The warranties herein are the exclusive warranties of HIMA to Buyer and no other warranties or conditions, statutory or otherwise, shall be implied. HIMA HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THAT OF TITLE. SPECIFICALLY, IT DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST INFRINGEMENT, COURSE OF DEALING AND USAGE OF TRADE.

(d) Buyer and successors of Buyer are limited to the remedies specified in this article and shall have no others for a nonconformity in the goods. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or its successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, installations, or non-conformities from any cause.

(e) In no event shall HIMA be responsible for providing working access to any defect, including the removal, assembly, replacement or reinstallation of any equipment, materials or structures to the extent necessary to permit HIMA to perform its warranty obligations.

(f) The applicable warranty shall be void if the equipment is altered or repaired other than by persons authorized or approved by HIMA to perform such work, or if Buyer has materially misrepresented any of the circumstances or facts upon which HIMA relied in providing the equipment.

(g) This Article 3 – Warranty does not apply to any software which may be furnished by HIMA. In such cases, Article 4 – Software License, Warranty & Fees applies.

### 4. SOFTWARE LICENSE, WARRANTY & FEES

(a) Unless otherwise provided for in the Purchase Order, no title to or ownership of any intellectual property, whether pre-existing or custom developed, or any part thereof is transferred to Buyer hereunder. Any engineered application and related intellectual property rights remain the exclusive property of HIMA or its corporate affiliates.

(b) Subject to the Terms and Conditions herein, HIMA hereby grants to Buyer: a non-exclusive, non-transferable right to use the computer software program licensed under the Purchase Order in machine-readable, object code form and any modifications made by HIMA thereto ("Software"), but only in connection with the configuration of the goods and operating system for which the Software is ordered and for the end-use purpose stated in the related HIMA operating documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software, without HIMA's prior written consent, except for making a single copy for backup or archival purposes in accordance with the related HIMA operating documentation, and provided that HIMA's confidential and proprietary legend is included. Except to the extent that the parties otherwise agree in writing, Buyer's license to use the copy of such Software shall terminate upon breach of this license or the Purchase Order by Buyer, including, without limitation, breach of payment or confidentiality obligations. All copies of the Software are the property of HIMA, and all copies for which the license is terminated shall be returned to HIMA promptly after termination.

(c) HIMA may authorize Buyer (such as a HIMA distributor or original equipment manufacturer) to transfer this software license and warranty to a third party ("HIMA-authorized transferee"). Such authorization to transfer shall be in writing and signed by a HIMA authorized representative. HIMA-authorized transferee shall have the same rights and obligations as Buyer, except it shall not have the right to transfer such license.

(d) HIMA warrants that on the date of shipment of the Software only to Buyer or Buyer's HIMA-authorized transferee hereunder that: (1) the Software media contain a true and correct copy of the Software and are free from material defects; (2) HIMA has the right to grant the license hereunder, and (3) the Software will function substantially in accordance with the related HIMA operating documentation. HIMA disclaims any warranty that the operation of the Software will be uninterrupted or error free. This warranty does not apply to software delivered by HIMA but produced by others. The warranty for software produced by others shall be the warranty as stated by the software producer.

(e) If within one (1) year from date of initial installation (but not more than eighteen (18) months from date of shipment by HIMA to Buyer) of Software, Buyer or its HIMA-authorized transferee hereunder discovers that the Software is not as warranted above and promptly notifies HIMA in writing, within this period of time, of the nonconformity, and if HIMA cannot correct the nonconformity or deems correction to be commercially impracticable or prohibitively expensive, Buyer's and Buyer's HIMA-authorized transferee's exclusive remedies, at HIMA's option and expense, are: (1) replacement of the nonconforming Software; or (2) termination of this license and a refund of an equitable, pro rata share of the contract price or license fee paid.

(f) This warranty will apply for the period specified in (e) above, provided that: (1) the Software is not modified, changed, or altered by anyone other than HIMA or its suppliers, unless authorized by HIMA in writing; (2) there is no change by anyone other than HIMA to the goods for which the Software is ordered; (3) the goods are in good operating order and are installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer, Buyer's HIMA-authorized transferee, or any of their agents, servants, employees, or contractors, or any third party; (5) Buyer or Buyer's HIMA-authorized transferee promptly notifies HIMA in



writing, within the period of time set forth in (e) above, of the nonconformity after it is discovered; and (6) all fees for the Software due to HIMA have been paid. HIMA HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST INFRINGEMENT, COURSE OF DEALING AND USAGE OF TRADE.

(g) Buyer and successors of Buyer are limited to the remedies specified in this article and shall have no others for a nonconformity in the Software. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, operating documentation, installations, or non-conformities from any cause.

(h) Unless otherwise provided in the Purchase Order, the fees for this Software license are included in the purchase price of the goods. Any subsequent modifications or enhancements to the Software made by HIMA are, at HIMA's option, subject to a fee.

(i) Any third party software provided hereunder is subject to the terms and conditions set out in the third party's license.

## 5. EXTENDED PRODUCT WARRANTY

Buyer acknowledges that any warranty on any of the equipment or parts manufactured by HIMA is subject to the warranty provided by HIMA under the agreement to purchase such equipment or parts and not under these Terms and Conditions. Buyer further acknowledges that it has been provided the opportunity to purchase an Extended Product Warranty for the term of the Purchase Order and any renewal term hereunder and, accordingly, has accepted or declined to do so, as the case may be. Buyer may exercise its option to purchase the Extended Product Warranty at the time of the original equipment purchase, but in no event later than the expiration of the warranty under the agreement to purchase such equipment. Notwithstanding the foregoing, if Buyer requests the Extended Product Warranty after the warranty under the agreement to purchase has expired, HIMA may conduct a site inspection and review the sale history of repairs and exchanges, following which HIMA shall, in its sole discretion, determine whether to fulfill Buyer's request for such Extended Product Warranty. The Extended Product Warranty applies only to equipment manufactured by HIMA. If these Terms and Conditions are subject to an Extended Product Warranty and additional equipment is added to the Purchase Order while such equipment is still subject to the warranty under the agreement to purchase, the equipment will be covered for the full term of either warranty. Upon the termination of the Purchase Order, the Extended Product Warranty becomes null and void.

## 6. LIMITATION OF LIABILITY

(a) HIMA's liabilities or obligations, and Buyer's exclusive remedy, for breach of any provision of the Terms and Conditions of the Purchase Order, as well as, work or materials provided hereunder, are expressly limited to the repair or replacement of the defective Software and/or equipment as provided herein.

(b) Notwithstanding any other provisions contained herein, under no circumstances shall HIMA warrant or be liable for the integrity of Buyer's database software stored at the HIMA's location, nor for the integrity of the media on which such database software is stored, nor the integrity of the mechanism by which the database software is transferred between HIMA and Buyer. Furthermore, in no event shall HIMA be liable for any claim or loss whatsoever which is incurred by Buyer arising out of or resulting from lost database data or inability to use such data.

(c) Notwithstanding any other provisions of the Purchase Order, Buyer expressly agrees that neither HIMA nor its subcontractors or suppliers will under any circumstances be liable under any theory of recovery, whether based in contract (including where fundamental breach is alleged and/or proven), in tort (including negligence and strict liability),

failure of a remedy to achieve its intended or essential purposes, under warranty, indemnity or otherwise, for any indirect, special, liquidated, incidental or consequential loss or damage whatsoever, including without limitation damage to or loss of property or equipment; loss of profits or revenue; loss of use of Buyer's materials, equipment or for any other loss or cost of a similar type, or for claims by Buyer for damages of Buyer's customers; increased costs of any kind, including but not limited to capital costs or of substitute use or performance; or claims of Buyers of Buyer or any third party.

(d) Buyer and HIMA agree that the exclusions and limitations set forth in this section are separate and independent from any remedies which Buyer may have hereunder and shall be given full force and effect whether or not any or all such remedies shall be deemed to have failed of their essential purpose. Buyer further expressly agrees that under no circumstances shall the total aggregate liability of HIMA, its subcontractors and suppliers under any theory of recovery, whether based in contract (including where fundamental breach is alleged and/or proven), in tort (including negligence and strict liability), failure of a remedy to achieve its intended or essential purposes, under warranty, indemnity or otherwise, exceed the total price paid to HIMA under the Purchase Order.

## 7. LIMITATIONS OF SERVICE AND MAINTENANCE OBLIGATIONS

(a) Unless expressly stated otherwise, HIMA will not be responsible for the maintenance, repair or replacement of, or services necessitated by: (1) unauthorized repairs or modifications by Buyer or any third party; (2) failures resulting from accidents, neglect, abuse, misuse, malicious damage or alteration, modification, attachments, parts, or repairs not performed, pre-approved or provided by HIMA; (3) failure to allow HIMA access to equipment; or (4) site related problems, operator error, operation or malfunction of software or hardware not covered by the Purchase Order or operation of software or hardware other than in accordance with the manufacturer's instructions.

(b) In any of the above events, if Buyer requests maintenance, repair, replacement or service, HIMA may carry out such maintenance, repair, replacement or service at HIMA's then prevailing prices.

(c) HIMA shall not be responsible for loss, delay, injury or damage that may be caused by circumstances beyond its control, including but not limited to acts or omissions by Buyer or its employees or agents, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, civil commotion, acts of government, fire, theft, corrosion, flood, water damage, lightning, acts of the elements, sabotage, lock-outs, strikes or labor disputes, computer viruses, program or system hackers, delays in transportation, or the failure of HIMA's suppliers to meet their delivery promises.

## 8. INDEMNIFICATION

(a) Subject to the terms of Article 6 – Limitation of Liability, HIMA agrees to indemnify and hold harmless Buyer only against third party claims, liabilities and damages as are incurred by the Buyer with respect to bodily injury, including death and/or physical damage to property, but not loss of use of the property, to the extent that the claims arise out of HIMA's negligent acts or omissions in connection with its performance of the Purchase Order. The sum total limit and liability of HIMA to Buyer under this clause shall NOT exceed those sums recoverable under HIMA's insurances.

(b) HIMA's indemnification obligations are contingent upon Buyer's prompt notice to HIMA of any claim for indemnification and on HIMA being given the right at its expense to settle and to defend or control the defense of any suit or claim requiring indemnification. The parties acknowledge that the price for which HIMA has agreed to perform its obligations hereunder has been calculated based upon the foregoing limitations of liability, and that HIMA has expressly relied on, and would not have entered into the Purchase Order but for, such limitations of liability.

## 9. PATENTS

HIMA shall pay costs and damages finally awarded in any suit against



Buyer or its vendees to the extent based upon a finding that the design or construction of the goods as furnished infringes a United States patent (except infringement occurring as a result of incorporating a design or modification at Buyer's request), provided that Buyer promptly notifies HIMA of any charge of infringement, and HIMA is given the right at its expense to settle such charge and to defend or control the defense of any suit based upon such charge. HIMA shall have no obligation hereunder with respect to claims, suits or proceedings, resulting from or related to, in whole or in part, (i) the use of software or software documentation, (ii) compliance with Buyer's specifications, (iii) the combination with, or modification of, the goods after delivery by HIMA, or (iv) the use of the goods, or any part thereof, in the practice of a process. THIS ARTICLE SETS FORTH HIMA'S ENTIRE LIABILITY WITH RESPECT TO PATENTS.

#### 10. CONFIDENTIALITY

(a) Buyer and HIMA will not disclose to any third party, confidential information received from each other. Confidential information includes any trade secrets or other competitively sensitive data or information disclosed under the Purchase Order, including without limitation technical or non-technical data, formulas, patterns, compilations, programs, software code, devices, methods, techniques, drawings, processes, financial data, financial plans, product or marketing plans or lists of actual or potential Buyers or suppliers ("Confidential Information").

(b) Confidential Information shall not include any information or data that is:

- i. generally available from public sources or in the public domain through no fault of the recipient;
- ii. received at any time from any third party without breach of a nondisclosure obligation to the discloser;
- iii. shown through proper documentation to have been developed independently by employees of the recipient who had no access to Confidential Information of the discloser or to have been known to the recipient without any obligation of confidentiality prior to its disclosure by the discloser;
- iv. required to be disclosed by law, except to the extent eligible for special treatment under an appropriate protective order, and provided recipient promptly notifies discloser of such requirement and allows discloser to seek an appropriate protective order; or
- v. approved for disclosure without any confidentiality obligation by prior written consent of an authorized representative of the discloser.

(c) The recipient agrees that, with respect to any disclosed Confidential Information, the following restrictions apply:

- i. the Confidential Information shall be disclosed within the recipient's organization only on a "need-to-know" basis to individuals who have been apprised of its confidential nature and shall not be further disclosed to any third party outside of the recipient's organization without the discloser's prior written consent;
- ii. the Confidential Information shall be treated at least according to the same internal security procedures and with the same degree of care regarding its confidentiality as similar information of the recipient is treated within the recipient's organization, but no less than a reasonable degree of care; and
- iii. the Confidential Information shall remain the property of the discloser, and the disclosure to the recipient hereunder creates only a limited license to use such information for purposes related to the furtherance of the parties' business relationship as anticipated hereunder and for no other purpose.

(d) Upon receipt of a written request from the discloser for return of the Confidential Information and, in any event, upon termination of the Purchase Order, the recipient shall promptly, at its expense, deliver to the discloser all such Confidential Information (including all copies and facsimiles thereof, or copies and documents containing such Confidential Information or portions thereof).

(e) The parties agree to comply with and will ensure their respective employees, agents, subcontractors and suppliers comply with the confidentiality obligations under these Terms and Conditions both during and after the term of the Purchase Order.

#### 11. RESPONSIBILITIES OF BUYER; PERFORMANCE; DELAYS

Timely performance by HIMA is contingent upon Buyer's supplying to HIMA, when needed, all required technical information and data, including drawing approvals, and all required commercial documentation. If HIMA suffers delay in performance due to any cause beyond its reasonable control, the time of performance shall be extended a period of time equal to the period of the delay and its consequences. HIMA will give to Buyer notice within a reasonable time after HIMA becomes aware of any such delay.

(b) Unless expressly stated otherwise, HIMA will not be responsible for the maintenance, repair or replacement of, or services necessitated by:

- i. unauthorized repairs or modifications by Buyer or any third party;
- ii. failures resulting from accidents, neglect, abuse, misuse, malicious damage or alteration, modification, attachments, parts, or repairs not performed, pre-approved or provided by HIMA;
- iii. failure to allow HIMA access to equipment; or
- iv. site related problems, operator error or operation of software or hardware other than in accordance with the manufacturer's instructions.

(c) In any of the above events, if Buyer requests maintenance, repair, replacement or service, HIMA may carry out such maintenance, repair, replacement or service at HIMA's then prevailing prices.

(d) HIMA shall not be responsible for loss, delay, injury or damage that may be caused by circumstances beyond its control, including but not limited to acts or omissions by Buyer or its employees or agents, acts of God, war, invasion, insurrection, riot, the order of any civil or military authority, civil commotion, acts of government, fire, theft, corrosion, flood, water damage, lightning, acts of the elements, sabotage, lock-outs, strikes or labor disputes, computer viruses, program or system hackers, delays in transportation, or the failure of HIMA's suppliers, subcontractors or carriers to meet their delivery promises.

(e) If Buyer requests HIMA to provide Goods outside HIMA offices, Buyer shall allow HIMA full and free access to equipment and plant that may form part of the Goods, as well as providing reasonable, safe working conditions, including adequate working space and telephone access.

(f) Buyer shall make every reasonable effort to schedule and coordinate with HIMA service representatives and allow them access to the equipment, systems, and software for the purpose of fulfilling the Service obligations. Buyer's failure to do so shall release HIMA from any liability to perform the Services.

(g) Buyer will provide HIMA service representatives with appropriate safety training at Buyer's facility, as may be required. All safety training related costs including labor time and expenses will be paid by Buyer and are not included in the pricing of the Purchase Order. HIMA representatives reserve the right to refuse to work under hazardous conditions.

(h) If requested by HIMA, Buyer shall assign a Buyer representative to be present while Goods are being provided.

(i) Buyer will promptly notify HIMA of any unusual operating conditions, system malfunctions or changes that may affect the equipment or any of the Services.

#### 12. SHIPMENT, TITLE & RISK OF LOSS

Unless specified otherwise, all shipments shall be **Ex Works HIMA Factory Germany**. All shipping costs between **HIMA Factory** and the



Buyer's delivery point will be the responsibility of Buyer, and in the absence of any provision otherwise stated in the Purchase Order, HIMA will ship via a carrier of its choosing and add all shipping costs to the Buyer's invoice. Transfer of title and risk shall be the delivery point specified in the purchase order.

### 13. TAXES

HIMA's prices do not include amounts for any sales, use, excise, or similar or governmental taxes. Buyer shall pay, in addition to HIMA's prices, the amount of any present or future such tax applicable to the sale or use of the goods or, in lieu of such payment, provide HIMA with a tax exemption certificate acceptable to the taxing authorities.

### 14. TERMS OF PAYMENT

(a) Payment to be made under the Purchase Order will provide for, and be in consideration of, only Goods specifically included in the Purchase Order. All other Goods shall be billed or surcharged on a time and material basis.

(b) Unless otherwise stated, all, payments shall be in United States dollars, and a pro rata payment shall become due as each, shipment is made. If shipment is delayed by Buyer, date of notice of readiness for shipment shall be deemed to be date of shipment for payment purposes. If Buyer-witnessed testing at HIMA's plant is a precondition to Buyer's authorization for shipment, and if Buyer delays such testing for more than fourteen (14) days following the date of notice of readiness for such testing, then said date of notice, plus fourteen days, shall be deemed to be date of shipment for payment purposes.

(c) Invoices are due 30 days from receipt or otherwise as may be set forth therein. If any payment is not received when due, HIMA may deem Buyer to be in breach hereof and may enforce any remedies available to it hereunder or at law, including without limitation suspension or termination of Goods and acceleration of payments.

(d) Any amount not paid within thirty (30) days from the date of HIMA's invoice shall, without prejudice to HIMA's right to immediate payment, accrue interest from the date of the invoice, until paid, at the rate of ten percent (10%) per annum. In the event of a dispute by Buyer regarding any portion or all on an invoiced amount, the undisputed amount shall be paid when due, and interest on the disputed, unpaid portion shall accrue as aforesaid, from the date of the invoice until the date of payment, to the extent such amounts are finally determined to be payable to HIMA.

(e) If any time in HIMA's judgment Buyer is unable or unwilling to meet the terms specified, HIMA may require satisfactory assurance or full or partial payment as a condition to commencing or continuing manufacture or making shipment, and may, if shipment has been made, recover the goods from the carrier, pending receipt of such assurances.

### 15. NON-CANCELLATION

HIMA or Buyer may terminate the Purchase Order effective immediately upon written notice to the other party, upon the occurrence of any of the following: (1) if either party shall be in default in the performance of any of its obligations under these Terms and Conditions and such default remains uncured for fifteen (15) days after receiving written notice from the other party of such default; or (2) if either party shall become insolvent, shall make an assignment for the benefit of creditors, or shall have a voluntary or involuntary proceeding in bankruptcy or insolvency instituted by or against it, or proceedings for corporate reorganization or dissolution are instituted by or against them.

### 16. EQUIPMENT AND SOFTWARE CHANGES

After the effective date of the Purchase Order, Buyer may request that additional Goods be added to the Purchase Order. Any changes in scope of the Purchase Order may be subject to additional charges to

cover the additional goods provided. HIMA will issue the Buyer with a Purchase Order variation request for each such instance, and will not complete any works associated with the variation without Buyer's written consent and agreement of additional charges.

### 17. SUBSTITUTION OF SERVICES

These Terms and Conditions define a scope of Goods which Buyer has requested from HIMA and which HIMA is to provide to Buyer. Buyer may periodically wish to substitute comparable or like services identified in these Terms and Conditions. Upon receipt of Buyer's written request for such a substitution of Goods, HIMA will use its best efforts to accommodate Buyer's request provided the request is reasonable to HIMA, it will not subject HIMA to additional costs (including without limitation, travel) and Buyer agrees to the substitution of Goods in writing.

### 18. NUCLEAR

Buyer represents and warrants that the goods covered by this contract shall not be used in or in connection with a nuclear facility or application. If Buyer is unable to make such representation and warranty, then Buyer agrees to indemnify and hold harmless HIMA and to waive and require its insurers to waive all right of recovery against HIMA for any damage, loss, destruction, injury or death resulting from a "nuclear incident," as that term is defined in the Atomic Energy Act of 1954, as amended, whether or not due to HIMA's negligence.

### 19. DISPUTES; ARBITRATION

Buyer will submit any claims or disputes arising under the Purchase Order to HIMA in writing. Buyer's obligation to make any payment is not conditioned upon HIMA's settlement and release of any claims or disputes. Buyer agrees that its failure to submit any claims or disputes in writing will constitute an express waiver by Buyer of any legal or equitable rights with respect to the subject matter of the claim or dispute. For any claims or disputes arising under the Purchase Order, the parties agree to attempt in good faith to resolve such claims or disputes promptly by negotiations between executives who have authority to settle same. Buyer agrees that any issues that cannot be resolved through direct negotiation within a reasonable time will be submitted to binding arbitration. Arbitration proceedings will be conducted by the American Arbitration Association ("AAA") in Houston, Texas, before a single arbitrator, in accordance with the AAA Commercial Rules and Procedures. Each party will bear its own expenses in any dispute resolution process or proceeding. Notwithstanding the existence, filing or pendency of any claim or dispute under the Purchase Order or with HIMA, Buyer will continue to fully perform its obligations under the Purchase Order and will not cease or delay performance or fail to make any payments pending resolution of any claim or dispute.

### 20. GOVERNING LAW

The Purchase Order shall be governed by and construed in accordance with the laws of the State of Texas and the laws of the United States of America applicable therein. The parties to the Purchase Order hereby irrevocably and unconditionally acknowledge to the exclusive jurisdiction of the courts of the State of Texas and all courts competent to hear appeals therefrom. The application of the United Nations Convention on Contracts for the International Sale of Goods, shall be excluded.

### 21. ATTORNEY FEES

Buyer shall be liable to HIMA for any attorney fees and costs incurred by HIMA in enforcing any of its rights hereunder.

### 22. STATUTE OF LIMITATIONS

To the extent permitted by applicable law, any lawsuit for breach of contract, including breach of warranty, arising out of the transactions covered by the Purchase Order, must be commenced not later than twelve (12) months from the date the cause of action accrued.



### **23. SHORTAGE**

Buyer must inspect goods promptly upon receipt and must submit any claim for shortage within thirty days after receipt or any such claim shall be waived.

### **24. STORAGE**

Buyer agrees to pay HIMA a storage charge of 1% of the total purchase price per month, or prorated portion thereof for a part of a month, for goods not authorized for shipment by Buyer within fourteen (14) days following either the specified delivery date or the date Buyer is notified that same are ready for shipment, whichever is later.

### **25. CHANGES IN LAWS & REGULATIONS**

HIMA's prices and timely performance are based on all applicable laws, rules, regulations, orders, codes, standards or requirements of governmental authorities effective on the date of HIMA's proposal. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle HIMA to an equitable adjustment in the prices and any time of performance.

### **26. ASSIGNMENT**

The Purchase Order and any rights or obligations thereunder may not be assigned by the Buyer without the advance written consent of HIMA. HIMA may assign to its affiliate without Buyer's consent.

### **27. SEVERABILITY**

None of these Terms and Conditions or any right that a party holds hereunder can be waived except by the written consent of the party waiving compliance. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.

### **28. FURTHER ASSURANCES**

Buyer shall, at its expense and without expense to HIMA, do or cause to be done such further acts as HIMA from time to time may reasonably require for the purpose of giving effect to Terms and Conditions or carrying out the intention or facilitating the performance of the terms of the Purchase Order.

### **29. NOTICE**

Any notices or other communications hereinunder shall be in writing, except as otherwise expressly permitted or required under the Purchase Order, and made or given by personal delivery or courier, by registered mail or by transmittal by electronic mail or facsimile machine addressed to the respective parties designated as the primary contacts named in the Purchase Order, or to such other mailing or electronic mail or facsimile machine address as any party may from time to time notify the other of in accordance with this paragraph. Any demand, notice or communication made or given by personal delivery or courier shall be conclusively deemed to have been given on the day of actual delivery thereof or, if made or given by registered mail, on the fifth business day following the deposit thereof in the mail or, if made or given by electronic mail or facsimile transmission, on the day of such transmission or if after 4 p.m. then on the first business day following the transmittal thereof.

### **30. HEADINGS**

The headings of these Terms and Conditions are for the purpose of ease of reference only and are not to be considered in construction or interpretation of the Purchase Order.

### **31. AMENDMENTS**

The Purchase Order shall not be modified or rescinded except in writing, duly executed by HIMA and Buyer. HIMA's performance under the Purchase Order is expressly conditional on Buyer's assenting to all of the terms of the Purchase Order, notwithstanding any different or

additional terms contained in any writing at any time submitted or to be submitted to HIMA by Buyer relating to this subject matter.

### **32. ENTIRE AGREEMENT**

The Purchase Order, together with all exhibits and attachments thereto, when accepted in writing by the Buyer and approved by an authorized representative of HIMA shall constitute the entire, complete and exclusive agreement between the parties with respect to the subject matter hereof and shall supersede and cancel any and all prior agreements, representations, warranties and understandings,