

Terms and Conditions for Sale of Products and Services

1. **Applicability; Definitions:** These terms and conditions of sale and Ellab's special terms and conditions, to the extent referenced in Ellab's Offer (collectively, "**Terms**"), are the only terms which govern the sale of the equipment, products and accessories ("**Products**", and each a "**Product**") and associated inspection, repair, calibration and routine maintenance work or services or rentals ("**Services**") by Ellab, Inc. ("**Ellab**", "**we**", "**us**" or "**our**") to a customer named on any Offer ("**Customer**", "**you**" or "**your**"), except as otherwise provided in this Section 1. "**Offer**" means any sales quote, proposal or order confirmation for Products and/or Services made by Ellab to Customer. "**Order**" means a purchase order or similar purchase instrument issued by Customer to Ellab for the purchase of Products and/or Services. Ellab's Terms shall govern and apply to Orders accepted by Ellab whether they are attached to Ellab's Offer or referenced on Ellab's website. Notwithstanding anything herein to the contrary, the sale of on-site consulting, onboarding, qualification, validation, and calibration services performed by Ellab at a non-Ellab site designated by you ("**Field Services**") is not governed by these Terms; rather, the sale of Field Services shall be governed by the [Terms and Conditions for Ellab Field Services - Fixed Price Project](#) ("**Field Services Terms**"). Further, the sale of any Products and/or Services pursuant to a mutually executed contract are governed by the terms and conditions of said contract.
2. **Quote, Order Confirmation and Acceptance:** Ellab's Offer and any Order issued by Customer to Ellab for Products and/or Services, and any amendments thereto, are expressly and strictly limited to Ellab's Terms. Customer's issuance of an Order in response to Ellab's Offer shall conclusively evidence Customer's unconditional acceptance of Ellab's Terms irrespective of any different terms and conditions included in Customer's Order and Ellab hereby rejects and shall not be bound by any terms or conditions in Customer's Order or other written communications that differ from, add to, or modify Ellab's Offer and/or Terms notwithstanding our fulfillment of Customer's Order. Ellab's failure to object to any terms and conditions or any other provisions contained in any communication from Customer do not waive any of Ellab's Terms. Our Offer includes only such Products and/or Services as specified therein. In the event of any conflict between our quote and our order confirmation, the order confirmation shall govern. In the event of any conflict between these Terms and the order confirmation, the order confirmation shall govern. If our Offer includes both (i) Products and/or Services, and (ii) Field Services, the Products and/or Services shall be governed by these Terms and the Field Services shall be governed by the Field Services Terms. In the event of any conflict between these Terms and the Field Services Terms, these Terms shall govern. Notwithstanding anything herein to the contrary, Ellab may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services.
3. **Specification:** We reserve the right, at any time, to carry out modifications to designs and specifications of Products. Verbally agreed alterations to Customer's Order specifications must be accepted by us in writing to be valid.
4. **Prices, Taxes and Duties:** Customer shall purchase the Products and Services from Ellab at the prices set forth in Ellab's Offer. The prices offered by Ellab apply only to the specific details of the Offer, including quantities, specifications, statement of work, and delivery schedules and Ellab's Terms.
 - 4.1. Unless otherwise specified in our Offer, quoted prices are firm and valid ex works for 30 days from the date of the quote. The price being firm is however conditional that the Products may be delivered not later than 90 days from the date of our order confirmation.
 - 4.2. Unless otherwise agreed to in writing by the parties, all prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. For avoidance of doubt, Customer is not entitled to reject delivery for non-payment of import duties, and shall be responsible for payment of, all import duties, ad valorem, excise tax, any VAT or other taxes, tariffs or other similar fees or charges required to be paid in connection with the delivery and importation of Products to Customer imposed or levied by any government or governmental agency; with the sole exception of taxes imposed on Ellab which are based on Ellab's income or gross revenues.
5. **Terms of Payment:** Customer shall pay all invoiced amounts due to Ellab in accordance with the payment terms set forth in our Offer. In the absence of specific payment terms in our Offer, payments to Ellab shall be made in U.S. Dollars within 30 days (and received by Ellab) from the date of invoice by wire transfer or check.
 - 5.1. In the event that any amount payable to us is not received by us after becoming due, in addition to all other remedies available under these Terms or at law (which Ellab does not waive by the exercise of any rights hereunder), and without prejudice to any other right, Ellab may: (i) charge interest on any such unpaid amounts at a rate of 1.5% per month or, if lower, the maximum amount permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid; and (ii) suspend our performance under the Agreement until payment has been made in full.
- 5.2. Customer shall not withhold or delay payment of any amounts due and payable by reason of any set-off of any Claim (as defined below) with Ellab, whether relating to Ellab's breach, bankruptcy, or otherwise.
- 5.3. Possible nonconformance or defects in the Products once delivery occurs do not entitle Customer to delay payment and will be remedied in accordance with Sections 9, 10, and 11.
6. **Delivery of Products:** Any quoted times or dates for dispatch or delivery of Products and provision of Services are approximate estimates only and are calculated by reference to whichever shall be the later of (i) the date on which Customer and we have agreed on all necessary details as to the extent and contents of the Products, inclusive of the contents and specification for the Software, (ii) the date of receipt by us of all necessary Customer-furnished information, instructions, drawings, specifications, materials, and equipment, if applicable, to enable us to put the work in process, or (iii) the date any down payment has been received by us. We will use our best endeavors to dispatch by the date given, but Ellab shall not be liable for non-adherence with such dates, and you are not entitled to cancel an order or refuse delivery or payment of the ordered Products for any delay in delivery. The date for dispatch or delivery shall be extended by a reasonable period if caused by or resulting from an unforeseeable event or occurrence beyond our reasonable control including, but not limited to, Customer's nonpayment or payment delays, acts of God, flood, fire, earthquake, epidemics, pandemics, explosions, wars, terrorist threats or acts, riot or other civil unrest, actions by any governmental authority, inability or Customer's failure to obtain any necessary import or export licenses or other consents, terrorism, fires, floods, windstorms, explosions, riots, natural disasters, sabotage, supplier delays, labor problems (including lockouts, strikes, slowdowns or other industrial disturbances), inability to obtain power, utilities, materials, labor, equipment, transportation, or restraints or delays by court injunction or affecting carriers.
7. **Delivery Terms:**
 - 7.1. Ellab shall make delivery in accordance with the terms on the face of our Offer, or in the absence thereof shall be made Ex Works our facility, or such other facility as we may designate, unless otherwise agreed to by the parties in writing. Ex Works ("**EXW**") shall be construed in accordance with INCOTERMS 2020 of the International Chamber of Commerce.
 - 7.2. Except as otherwise provided in Sections 7.3, 9, 10, 11, and 12, Ellab shall have no further responsibility for the Products, and title and all risk of damage to or loss or delay of the Products shall pass to Customer upon our tender at the EXW delivery point to (a) a common carrier designated by us, or (b) an agent or any other person specified by Customer acting on behalf of Customer. Customer shall insure, at its cost, each shipment of Products with a reputable insurer for the full value of such shipment. Such insurance shall provide for full coverage from the time the Products are delivered at the EXW point until Customer shall have paid Ellab for such Products in full.
 - 7.3. When delivery terms on the face of the Offer are other than EXW and obligate Ellab for risk during transit, we will repair or, at our option replace free of charge, Products lost or damaged in transit, provided that we are given Notice of such loss or damage within such time as will enable us to comply with the carriers conditions of carriage as affecting loss or damage in transit.
 - 7.4. Any reference to freight charges contained in our Offer is an estimate. Ellab is not responsible for any variance that may occur between freight estimates contained in an Offer and actual freight charges applied on the actual shipment, and in any case, Customer shall incur and be responsible for all costs the carrier charges Ellab associated therewith which, if not included in our Offer, will be invoiced to Customer.
 - 7.5. Ellab reserves all rights with respect to delivered Products permitted by law including, without limitation, the rights of rescission, repossession, resale, and stoppage in transit until the full amount due from Customer in respect of all delivered Products has been paid. As collateral security for the payment

of the purchase price of the Products, Customer hereby grants to Ellab a lien on and security interest in and to all of the right, title, and interest of Customer in, to and under the Products, 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. The security interest granted under this provision constitutes a purchase money security interest under the Colorado Uniform Commercial Code.

7.6. All Products delivered shall be packaged in accordance with Ellab's standard packing and/or shipping procedures for such Products.

8. Annual Maintenance Service Recommendations: To ensure your equipment and systems are up to date and accurate, Ellab recommends that Products are sent in for service at least once per year.

9. Limited Warranty: Ellab warrants that all Products delivered under this Agreement, for the applicable warranty period, shall (a) be free from defects in material or design, and (b) conform to Ellab's specifications and performance figures quoted by us, provided Customer shall have described fully and accurately, in writing, all of Customer's specifications, including but not limited to tolerances and other requirements, Customer's purpose for which the Products would be used, and all conditions under which the Products would be required to operate and we have agreed in a separate writing to guarantee any specified tolerances and other performance figures. As used herein, the "applicable warranty period" means the warranty period applicable to the Product as specified by Ellab, which begins from the invoice date of the original Products shipped. Upon request, we will furnish you with a schedule of the applicable warranty periods for our Products. Ellab warrants all Services furnished under this Agreement shall be free from defects in workmanship for a period of ninety (90) days from the date the Service is performed.

These warranties do not apply to any consumable Products, including but not limited to batteries, or Products that, upon examination by Ellab, or Ellab's authorized service provider, are found to have been (i) mishandled, misused, abused, altered from their original state or damaged by Customer or any third party or natural calamity, including but not limited to fire, lightning, flood, or earthquake; (ii) used outside the application intended by Ellab or its physical specifications; (iii) repaired or serviced by a party other than Ellab without Ellab's prior written approval; (iv) improperly stored, installed, operated, or maintained in a manner inconsistent with Ellab's instructions, or (v) defects attributable to improper, incomplete, or inaccurate specifications or other information provided to us by Customer, or (vi) not calibrated at least once per year or such shorter interval as the Customer's handling, purpose, use or application may require or make necessary to ensure accuracy, proper use or connection of Products, or (vii) not supplied by us, or (viii) subjected to overload or insufficient power supply, improper ground connection, cabling or electrical accommodation, excessive EMI/RFI, or similar. These warranties do not apply to defects attributed to (i) normal wear and tear, (ii) failure to comply with Ellab's safety warnings, or (iii) which under proper use were not discovered and claimed by giving of proper Notice in accordance with the terms and conditions of Section 12 within the relevant warranty period.

Ellab, at its sole option, shall either repair or replace defective Products, or re-perform defective Services, or issue Customer a credit for the original price of the defective Products or Services, provided that defective Products have been returned to us freight and insurance prepaid at Customer's expense if we shall have so required. Such repair, replacement or credit shall be Customer's sole remedy for defective Products and/or Services. Under no circumstances is Ellab liable for, and Customer waives any Claim for (i) the recall, retrieval, removal, dismantling, re-installation, redeployment, or re-performing defective Services, or issuance of a credit for the original price of the defective Products or Services or re-commissioning of any defective Products or any costs associated therewith, and (ii) the failure to attain any performance figures quoted by us unless we have specifically guaranteed them in writing, subject to any tolerances specified or agreed to by us in writing. Consumables obtained from third parties shall bear the warranty of their manufacturer. THESE EXPRESS WARRANTIES, INCLUDING THE REMEDIES SET FORTH HEREIN, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED. NO WARRANTY OF DESIGN, MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, CONDITION, FITNESS FOR A PARTICULAR USE OR PURPOSE, ABSENCE OF LATENT AND OTHER DEFECTS WHETHER OR NOT DISCOVERABLE, QUALITY OF MATERIALS OR WORKMANSHIP IS INTENDED OR GIVEN. IN THE CASE OF GOODS OTHER THAN THOSE OF ELLAB'S OR ELLAB'S

PARENTS' OR AFFILIATES' OWN MANUFACTURE, ELLAB MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED. EXCEPT FOR THE WARRANTIES SET FORTH HEREIN, NO EMPLOYEE OR AGENT OF ELLAB OR MANUFACTURER IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE WARRANTIES SET FORTH HEREIN.

10. Inspection by Customer: Customer shall inspect the Products within 30 days of receipt ("Inspection Period"). Customer will be deemed to have accepted the Products unless it notifies Ellab in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Ellab. "Nonconforming Products" means only the following: (i) product shipped is different than identified in Customer's Order; or (ii) product's label or packaging incorrectly identifies its contents. If Customer timely notifies Ellab of any Nonconforming Products, Ellab shall, in its sole discretion, upon receipt and reasonable verification by Ellab of the Nonconforming Products (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith.

11. Inspection, Calibration, Repair, or Warranty Service by Ellab:

11.1. Return Material Authorizations (RMAs): Except for returns of Nonconforming Products which shall be governed by Section 10 above, Customer's return of Products for inspection, calibration, repair, or warranty service is subject to Ellab's current Return Material Authorization ("RMA") process. Failure to follow Ellab's RMA process may result in lost Products, delays, additional service, warranty denial, refusal of a return shipment, or return of the Products to Customer at Customer's cost.

Products shall not be returned without Ellab's prior authorization, as evidenced by an RMA number issued by Ellab. An RMA number is simply the authorization of the return for Services or warranty coverage; it is not a guarantee that the returned Products are eligible for warranty coverage or can or will be repaired or replaced.

In order to obtain an RMA number, Customer must first request an RMA Checklist from the Ellab Service Team at Service.Inc@ellab.com or by calling the Ellab Service Team at 303-425-3370. Upon receipt of the RMA Checklist, Ellab will then issue Customer an RMA number, and for international Customers, additional instructions for returns.

11.2. RMA Preparation Prior to Sending: We recommend that Customer not return the accessories (manual, connection cables, etc.) with the Products for inspection, calibration, or repair, and components such as batteries, etc. shall also be removed from the Products before return. If these devices are relevant to describe repair problems and necessary to be returned with the Products, please clearly indicate these items included on the RMA Checklist. Ellab shall not be responsible for any item that is not itemized. We expect that items sent to Ellab are prepared for Services. That means we expect Products to be cleaned before being sent to Ellab. Upon receipt, if any Products are not ready for Services, your order may be subject to a cleaning fee. When returning the defective Product, please pack it properly. In case of improper packing resulting in damage or loss in transit, Ellab reserves the right to reject the return of Products at Customer's expense.

11.3. Shipping for Inspection, Calibration, Repair or Warranty Service: Once an RMA number is obtained and the Products are properly cleaned and packed, Customer shall ship the Products freight and insurance prepaid in accordance with instructions issued by Ellab. Customer is responsible for all insurance, freight, shipping, handling, duties, and taxes for returned Products both ways and Customer bears the risk of loss during shipment. Customer shall ship RMA returns to our facility, and after service, Ellab shall return RMA Products to Customer FCA (delivered to our preferred carrier) at our facility. When shipping the Products, the RMA number must appear on the shipping label, on the outside of the shipping box, and all paperwork associated with the return. Upon receipt of the RMA Products, Ellab will generate an acknowledgement email to inform you we have received the Products.

11.4. Determination of Warranty or Inspection or Repair Price; Quotation Response Procedure and Storage: Prices and

processes for RMA Products returned for calibration shall be governed by Section 11.5 below. Otherwise, upon receipt of RMA Products, Ellab shall inspect the Products and determine whether the Products are covered by Ellab's warranty. If the Products are covered by warranty, Ellab shall administer Customer's remedies in accordance with Section 9. If the Products are found not to be defective or requiring repair, Ellab shall notify the Customer and return such Products to Customer at Customer's expense and may also charge for inspection costs. If the Products are not covered by warranty, Ellab will provide a service quote which shall require Customer's acceptance prior to any Services being performed; provided, however, that minor repairs may be carried out without a service quote at Customer's expense. During the repair process, additional unforeseen repairs may be discovered and additional costs may apply, the costs of which shall also require Customer's acceptance in accordance with the preceding sentence.

Ellab requires your response to a service quotation within 3 months from the date of service quotation. All Products returned to us, for which a service quote is issued and declined, or no response is given by Customer within 3 months, will incur inspection costs. If no response is received, we will store your Products for 1-year, after which your Products will be disposed of without any liability to Ellab. Customer may request our approval to extend the 3 month period mentioned, which shall not be unreasonably withheld, or the return of Customer's Products by notifying our Service department. Customer may re-open the RMA case after expiration of the 3 month period (or approved extension) but before the 1 year disposal period occurs subject to a re-opening fee. In no event shall Ellab retain or store returned Products for more than 1-year.

11.5. Calibration Service Price and Process: All Products returned for calibration will be processed at Customer's expense without quotation or prior authorization and upon receipt of the RMA Products. If during the calibration process it is discovered that additional services are required, Ellab will provide a service quote which shall require Customer's acceptance prior to any Services being performed, which requires your response within 3 weeks from the date of the service quotation. To keep service times at a minimum and to prevent certificates from becoming outdated, we expect your prompt acceptance of our Offer; if your acceptance is delayed, you may either have to accept slightly old certificates or pay additional costs for new calibrations/certificates. Ellab may partially deliver already calibrated instruments and may not consolidate the return shipment, as all calibration orders are generally returned immediately after completion.

12. Rental Service by Ellab: Customers may rent Products from Ellab, and such rented Products shall be subject to these Terms. Rented Products shall include a calibration certificate (as applicable), a fresh battery, and all equipment assembled and ready for use. The standard rental period shall be 30 days, unless otherwise stated on our Offer, which shall begin upon receipt by the Customer. If Products are not shipped by Customer and received by Ellab by the conclusion of the rental period, Customer will automatically be billed for an additional full rental period. Customer shall keep the Products in good working condition and shall not alter, damage, or reconfigure any Products. If calibration becomes due during the term of any rental period, Ellab shall provide these services free of charge. Customer is responsible for all freight, shipping, handling, duties, and taxes for returned Products upon conclusion of the rental period to our facility and Customer bears the risk of loss during shipment. Upon return of the Products to Ellab at the end of the rental period, Ellab shall conduct a visual and functional inspection. Post-verifications, unless otherwise stated on our Offer, shall be an additional cost to Customer. Customer shall also be responsible for all costs relating to any loss or damage to any Products, excepting reasonable wear and tear resulting from the proper use of such Products. No products shall be sublet by Customer, nor shall Customer assign or transfer any interest in the Products to any other party during the term of any rental period, and Ellab shall at all times retain ownership and title of all Products subject to rental. We expect that Products returning from rental are prepared and cleaned for return. Upon receipt, if any Products are not appropriately cleaned, you may be subject to a cleaning fee.

13. Customer's Acts or Omissions: If Ellab's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Ellab shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or

losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

14. Confidentiality: Customer shall keep confidential and not directly or indirectly disclose to any third party, copy or reproduce or use for any purpose other than in furtherance of this Agreement, any Confidential Information of Ellab, as defined herein, without Ellab's prior written consent. "Confidential Information" includes, but is not limited to, business, financial, statistical, and commercial information, pricing, technical data and information, formulae, analyses, trade secrets, ideas, methods, processes, know how, computer programs, designs, data sheets, schematics, configurations, and drawings. Ellab shall be entitled to injunctive relief for any violation of this Section. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of disclosure by Customer; (ii) is or becomes available to Customer on a non-confidential basis from a source other than Ellab when such source is not, to the best of Customer's knowledge, subject to any confidentiality obligation with Ellab; or (iii) was independently developed by Customer without reference to Ellab's Confidential Information, and Customer can verify development of such information by written documentation. All such information, whether stated in said materials or our letters, Offers, catalogues, or other publicity material, shall be regarded as a guidance only and is not binding to us unless stated to be so in writing.

15. Proprietary Rights: Ellab shall retain all right, title, and interest in and to any data, information, Software programs, tools, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, Products, know-how, processes, techniques, and the like used or developed by Ellab, its employees, and its subcontractors in connection with Customer's Order. Customer agrees that Ellab retains all proprietary rights in and to all Products, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to Products or Services. Unless otherwise identified in writing to Ellab, no information or knowledge heretofore or hereafter disclosed to Ellab in the performance of, or in connection with, the terms hereof, shall be deemed to be confidential or proprietary and any such information or knowledge shall be free from restrictions, other than a claim for patent infringement, as part of the consideration hereof.

16. Third Party Intellectual Property Indemnification: Ellab shall hold harmless and indemnify Customer against all third party claims relating to infringement of any patent, copyright, trademark, or design to the extent that (i) the infringing Products are manufactured, sold, or used, in whole or in part, pursuant to Ellab's specifications, designs, drawings, or other technical data and (ii) provided that Customer notifies Ellab in writing of any such claim as soon as reasonably practicable, and allows Ellab to control, and reasonably cooperates with Ellab in, the defense of any such claim and related settlement negotiations and has in no way acted to the prejudice of the Ellab's ability to control and defend such claims. To the extent that any Products are held by a court of competent jurisdiction or are believed by Ellab to infringe or otherwise violate a third party's proprietary rights, Ellab may, at its option and expense, either (i) obtain for Customer a license to continue using such Products on substantially the same terms set forth herein; or (ii) modify the affected Products to be non-infringing; or (iii) exchange the affected Products with non-infringing Products; or (iv) if neither of the foregoing alternatives are reasonably available to Ellab, Ellab may require Customer to return the infringing Products and all rights thereto, and refund to Customer the price paid to Ellab by Customer for the infringing Products at their depreciated value as of the return date for the Products, with depreciation calculated by equal amounts for every year of the lifetime of the Products as determined by us. Ellab shall have no obligation under this provision to the extent any claim is based on (i) modifications of Products or deliverables by a party other than Ellab or Ellab's authorized representative; (ii) the combination, operation, or use of Products with equipment, devices, Software, or data not supplied by Ellab; (iii) the use or installation of Products in an environment for which Products were not intended; (iv) Customer's failure to use updated or modified versions of Products provided by Ellab; or (v) the negligent acts or omissions or willful misconduct of Customer, its employees, representatives, or affiliates. This Section, and the indemnification provided herein, does not apply to any Products manufactured, sold, or used, in whole or in part, that infringe as a result of or pursuant to Customer's specifications, designs, drawings, instructions or other technical data or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to us, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by us. THE FOREGOING CONSTITUTES THE ENTIRE

LIABILITY OF ELLAB AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

17. **Software:** Products may contain or be delivered with machine software or user oriented software in executable form, or software packages, licenses or tools, which is contained in Products (collectively, "Software") and, except as otherwise expressly provided herein, all references to "Products" herein shall be deemed to include the accompanying Software, provided that nothing herein shall be construed as the sale of, or passage of title in, any Software or any other intellectual property embedded in the Products to Customer. Ellab hereby grants to Customer a non-exclusive, non-sublicense, non-transferrable, limited and revocable right to use the relevant Software (in object form only) and solely as included and intended to be used in the Products purchased by Customer from us and for use only in the manner which Ellab intends the Software to be used, for the duration of the useful life of such Products, and subject to the terms and conditions stated in our End User License Agreement ("EULA") applicable to that Software. Customer shall not and shall not permit any third party to, without the prior written consent of Ellab: (i) alter, modify, translate, or adapt any Software or create any derivative works based thereon; (ii) copy any Software; (iii) assign, sublicense or otherwise transfer the Software in whole or in part, except as permitted herein; (iv) use the Software except as specifically contemplated in the applicable EULA; or (v) disclose the Software to any third party. The entire right, title and interest in the Software shall remain with Ellab, and Customer shall not remove any copyright notices or other legends from the Software or any accompanying documentation. For those Products (i.e., Software) for which we transfer the right to use only, it is agreed that the wording "sell" and "buy" or similar wording or derivatives thereof shall mean "transfer the right to use", and "accept the right to use". "Ellab" and "customer" or similar wording or derivatives thereof shall mean "transferor" and "recipient" of the right to use. Customer acknowledges that any and all of the copyright, patents, design rights, trademarks, domain names, logos, get ups, trade secrets, confidential information, all rights in computer Software and data, databases, inventions or utility model rights and know-how (whether registered or unregistered) together with all other rights of a similar nature howsoever arising anywhere in the world in connection with the Products are and shall remain the property of the owner or its licensors.
18. **Compliance with Law; Export:** You agree to comply with all applicable laws and regulations of all countries involved in the sale of Products under this Agreement, including the laws of all states, the laws of the United States including without limitation all export control laws and regulations such as the Export Administration Regulations (EAR), and any export and/or import regulations in other countries. Customer is responsible for obtaining, at its cost, any necessary export or import permission or license from the proper governmental authorities if Customer intends to export or import Products to any country for which such permission or license is required. Customer agrees and hereby covenants that it will not export, re-export, or import Products to any restricted/embargoed country as may be designated from time to time by the U.S. Government unless otherwise authorized by the U.S. Government. Customer agrees to indemnify and hold Ellab harmless from any claims or liability, inclusive of product liability, arising from Customer's failure to (a) comply with all U.S. export control laws and regulations, (b) comply with all import laws and regulations applicable to Customer, and (c) the obligations upon Customer under this section. The parties each agree to provide to the other in a timely manner such information and assistance as may reasonably be required in connection with securing any required authorizations or licenses. Any order which cannot be fulfilled due to law or regulations or Ellab's inability to obtain any required export license(s), may be cancelled by Ellab without any further liability or obligations owed to Customer.
19. **Resale:** Customer represents and warrants that it is buying Ellab's Products for its use only, and not for resale, unless Customer has signed an Ellab Standard Distributor Agreement. Ellab reserves the right to terminate this Agreement, without any further liability, if any Customer buys or has bought Products for the purposes of reselling same, in violation of this Agreement.
20. **Extra Cost:** Should we incur extra cost owing to variation or suspension of work by your instruction or lack of instruction, delays, overtime, unusual hours, mistakes, or work for which we are not responsible, a reasonable sum in respect of such extra cost, as well as the cost incurred by keeping any of our personnel on the site after completion of the installation, shall be added to the contract price and paid for accordingly.
21. **Insurance:** In addition to Customer's obligation to insure delivery of Products in transit under Section 7.2, Customer is responsible for carrying general or public liability insurance, workers' compensation insurance and the provision of safe working conditions on Customer's premises at reasonable commercial levels.
22. **Limitation of Liability:** IN NO EVENT SHALL ELLAB BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR LOSS OF DATA, INCORRECT MEASURING, RECORDING OR PROCESSING OF DATA, NON-FUNCTIONING OF ANY OF THE EQUIPMENT, OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ELLAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL ELLAB BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES OR LOSSES RELATED TO OR ARISING FROM DELIVERED GOODS THAT HAVE BEEN ALTERED OR MODIFIED IN ANY SHAPE OR FORM BY CUSTOMER OR ANY THIRD PARTY. IN NO EVENT SHALL ELLAB'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 THE TOTAL OF THE AMOUNTS PAID TO ELLAB FOR THE GOODS AND SERVICES SOLD HEREUNDER OR USD\$75,000, WHICHEVER IS LESS.
23. **Cancellation and Termination:** Customer may not cancel, suspend, or terminate a confirmed Order or this Agreement, in whole or in part, without our agreement in writing. In addition to any remedies that may be provided under these Terms, Ellab may terminate this Agreement, in whole or in part as to any Order, with immediate effect upon Notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement and such failure continues for 5 days following Notice thereof; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
24. **Waiver:** No waiver by Ellab of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by a duly authorized representative of Ellab. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
25. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other Party in any manner whatsoever.
26. **Assignment; Third Party Beneficiaries:** Except as provided in this Section, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms. Customer shall not assign or delegate this Agreement or any of its rights, interests, or obligations under this Agreement without the prior written consent of Ellab. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement. This Agreement and all of the rights, interests, and obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by Ellab without the prior written consent of Customer. The parties hereby designate Ellab A/S as a third-party beneficiary of this Agreement having the right to enforce this Agreement.
27. **Arbitration; Governing Law:** The parties agree that any dispute, claim, or controversy arising out of, connected with, or related to this Agreement (a "Claim"), or the dealings between the parties occurring at any time (including before the inception of or after termination of this Agreement), including without limitation any Claim arising out of, connected with, or related to (i) the creation,

existence, scope, validity, effect, interpretation, performance or non-performance, or termination of, or the legal relationships established by, this Agreement, or the consequences of its supposed nullity; (ii) any non-contractual rights or obligations arising out of, connected with, or related to this Agreement; and (iii) the relationship between the parties created by this Agreement and any dealings between the parties related to the subject matter of the transactions contemplated by this Agreement; all regardless of whether such Claim may be characterized as sounding in contract, tort, breach of duty, fraud (including fraudulent inducement to enter into or fraud in the inception of this Agreement), or any other common law or statutory law or equitable principle or doctrine and regardless of the relief sought (even if such relief includes rescission of this Agreement) shall be finally and conclusively resolved by binding arbitration. In case the amount in dispute is less than USD\$250,000 (or any equivalent thereof) such arbitration shall be conducted by one arbitrator, otherwise it shall be conducted by three arbitrators.

27.1. In either case the arbitrator(s) shall be appointed with the rules of the American Arbitration Association (the "AAA") and such arbitration shall be conducted in the English language in the city of Denver, Colorado, under the administration of the AAA in accordance with the laws of the State of Colorado and the AAA's Commercial Arbitration Rules and Mediation Procedures (collectively, the "Rules"); provided, however, the parties shall agree to address any Claim as efficiently as possible, e.g. reasonable limitations on document exchange, depositions, and dispositive motions, as well as expedited deadlines, and shall apply the AAA's Expedited Procedures to any dispute less than USD 250,000 (or any equivalent thereof). The parties to the arbitration shall facilitate the arbitration by: (i) conducting arbitration hearings to the greatest extent possible on successive days; and (ii) observing strictly the periods established by the Rules or by the arbitrator(s) for the submission of evidence or briefs.

27.2. Any award rendered by the arbitrator(s) shall be final and binding upon each Party to the arbitration and judgment on the award may be entered in any court of competent jurisdiction. The arbitration award may be enforced by any court of competent jurisdiction through injunctive or other equitable relief, as well as all relief and process available at law. The arbitrator(s) may issue interim awards, interlocutory, provisional, or partial relief, including temporary restraining orders, preliminary injunctions, orders to compel discovery, orders of attachment, protective orders, any of which may be enforced as an arbitration award by any court of competent jurisdiction. Any arbitration award for money shall be made and shall be payable in U.S. dollars. The arbitrator(s) shall award interest from the date of any monetary breach of this Agreement and shall fix the rate of interest on any amount awarded from the date of the award to the date the award is paid in full.

27.3. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule.

28. Notices: All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Offer or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by electronic mail (with proof of receipt), personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) certified or registered mail (in every case other than electronic mail, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

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

30. Headings: The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of any term, condition, or provision herein.

31. Survival: Any section or provision herein which contemplates performance or observance subsequent to any termination or expiration of Customer's order, or which by its nature should survive, shall survive any termination or expiration of Customer's order and

continue in full force and effect.

32. Amendment and Modification: These Terms and any Agreement, including any Offer, may only be amended or modified by written instrument signed by duly authorized representatives of each party.

33. Entire Agreement: Ellab's Terms (including Ellab's special terms and conditions, to the extent referenced in Ellab's Offer), Field Services Terms, Ellab's Offer and Customer's Order (as accepted by Ellab in accordance with the terms herein), including applicable specifications, statement of work, and any other mutually agreed documents referenced therein (collectively, this "Agreement"), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of Customer's Order.