

## **BOOM & KROON B.V. TERMS AND CONDITIONS OF COMMERCIAL SALE & SUPPLY**

### **1. OFFER, QUOTATION, ACKNOWLEDGEMENT OR CONFIRMATION**

These terms and conditions of commercial sale (the "Terms and Conditions") apply to and form integral part of:

- a. all quotations and offers (hereinafter both referred to as "Offer") of Boom & Kroon B.V. ("B&K") to Buyer,
- b. all acceptances, acknowledgments or confirmations by B&K (hereinafter all referred to as "Confirmation") of any order of Buyer, including without limitation orders of Buyer resulting from any pricing- or other framework agreement between any Buyer and B&K B.V., unless explicitly agreed otherwise in writing between B&K and Buyer,
- c. any agreement resulting from such Offer or Confirmation and
- d. any agreement incorporating these Terms and Condition by reference (both types of agreements referred to under (c) and (d) shall hereinafter be referred to as an "Agreement")

regarding the sale by B&K and purchase by Buyer of goods ("Products"), unless B&K explicitly agrees in writing to the exclusion hereof.

These Terms and Conditions shall constitute all of the terms and conditions of any Offer, Confirmation and Agreement between B&K and Buyer relating to the sale by B&K and purchase by Buyer of Products. Any specifications and any terms and conditions set forth on any document or documents issued by Buyer (including "Pull documents" as defined below) either before or after issuance of any document by B&K setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by B&K, and any such document shall be wholly inapplicable to any sale made by B&K and shall not be binding in any way on B&K. No Offer, Confirmation or Agreement constitutes an acceptance by B&K of any other terms and conditions and B&K does not intend to enter into an Agreement other than under these Terms and Conditions.

Any Offer is expressly made conditional on Buyer's assent to all of the terms contained in the Offer without deviation. Acceptance by Buyer of an Offer may be evidenced by (i) Buyer's written or verbal assent or the written or verbal assent of any representative of Buyer, (ii) Buyer's acceptance of delivery of the Products or the first installment of the Products (if applicable), or acceptance by any representative of Buyer, or (iii) other conduct by Buyer or any representative of Buyer consistent with acceptance of the Offer.

In the event that any Offer or Confirmation is sent in response to Buyer's blanket purchase order, the terms and conditions of that Offer or Confirmation, including these Terms and Conditions, shall apply to any "pull" by Buyer or delivery by B&K, irrespective of whether Buyer submits additional purchase orders (electronically or otherwise) ("Pull Documents") and whether B&K provides a Confirmation to such additional purchase orders. All terms and conditions of such Pull Documents are hereby rejected.

B&K' Offers are open for acceptance within the period stated by B&K in the Offer or, when no period is stated, within thirty (30) days from the date of the Offer, but any Offer may be withdrawn or revoked by B&K at any time prior to the receipt by B&K of the Buyer's acceptance related thereto.

If B&K receives an order from Buyer for the sale by B&K and purchase by Buyer of Products and such order is not a response to an Offer by B&K, or if B&K receives an order or acceptance by Buyer which deviates from B&K' Offer, such order or acceptance, respectively, shall be deemed to be a request for an Offer only.

An acceptance by Buyer of any Offer made by an order gatherer, liaison officer, agent or sales representative of B&K shall first constitute an Agreement between B&K and Buyer upon explicit Confirmation by B&K itself.

### **2. PRODUCTS, QUANTITIES AND PRICING**

Buyer shall purchase the Products in the quantities and at the prices specified in B&K' Offer or, as the case may be, Confirmation or Agreement. Prices in any Offer, Confirmation or Agreement are in [Euros/United States Dollars/UK Pounds], based on delivery Ex-Works (Incoterms 2000) B&K' manufacturing facility or

other facility designated by B&K, unless agreed otherwise in writing between Buyer and B&K and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. Taxes, duties and similar levies will be added by B&K to the sales price where B&K is required by law to pay or collect them and will be paid by Buyer together with the price.

### 3. RIGHTS IN SOFTWARE, DOCUMENTATION AND INTELLECTUAL PROPERTY

All intellectual property rights covering Products including without limitation any and all software and/or documentation or data included in, with or comprising Products, and all ownership rights in and to such intellectual property rights, software, documentation and data, shall remain solely and exclusively with B&K or its third party suppliers, whether or not it was developed specifically for the Buyer.

No rights or licenses are granted, or implied by estoppel or otherwise, under any intellectual property rights of B&K and/or its affiliates or any intellectual property residing in the Products, including without limitation, software and/or documentation or any data furnished by B&K, except for the license under any of B&K' intellectual property rights to use, promote and resell Products sold by B&K to Buyer subject to the provisions set forth herein.

Notwithstanding anything to the contrary herein, these Terms and Conditions shall not be construed as:

- a. Conferring any license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party acquiring any item(s) such as, but not limited to, Product(s), including without limitation, software and/or documentation or any data furnished by B&K, for the combination of such acquired item(s) with one or more other items (including items acquired from Buyer) even if such items have no substantial use other than as part of such combination.
- b. Conferring any license or right with respect to any trademark, trade or brand name, a corporate name of B&K and/or its affiliate(s), or any other name or mark, or contraction abbreviation or simulation thereof.
- c. Imposing on B&K and/or its affiliate(s) any obligation to furnish any manufacturing or technical information except as expressly required under these Terms and Conditions.
- d. Conferring any license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any intellectual property rights of B&K covering a standard set by a standard setting body and/or agreed to between at least two companies.
- e. Conferring any license or immunity, either directly or by implication, estoppel or otherwise to Buyer or any third party under any intellectual property rights of B&K if B&K has informed Buyer or has published (in a data-sheet concerning the Product or elsewhere) a statement that a separate license has to be obtained and/or that no implied license is granted. The absence of such a statement in a given version of the data-sheet is of no consequence whatsoever if a subsequent version of the data-sheet does contain such a statement.

To the extent that Buyer is authorized to reproduce and distribute such software and documentation, such reproduction and distribution may be made either in electronic or hard-copy format, solely as required for use with Buyer's Product. Buyer shall not copy, reproduce or distribute software and/or documentation except as specifically provided herein or pursuant to a separate, written license duly executed by B&K. Unless otherwise specifically provided in writing and signed by B&K, Buyer shall not have the right to any software source code. Any and all source code included as part of the software and any compilation or derivative thereof is the proprietary information of B&K and is confidential in nature. Buyer shall not: (a) modify, adapt, alter, translate, or create derivative works from, the software; (b) assign, sub-license, lease, rent, loan, transfer, disclose, or otherwise make available the software; (c) merge or incorporate the software with or into any other software; or (d) reverse assemble, decompile, disassemble, or otherwise attempt to derive the source code for the Software without written authorization from B&K. Buyer shall reproduce, without any amendments or changes thereto, any proprietary rights legends of B&K or its third party suppliers in any software or documentation provided by B&K.

Buyer's rights under the Agreement are conditioned upon Buyer not performing the following actions in a manner that would require the Product or any derivative work thereof to be licensed as Publicly Available Software:

- i. incorporate Identified Software into the Product or any derivative work thereof;
- ii. combine Identified Software with the Product or any derivative work thereof;
- iii. distribute Identified Software in conjunction with the Product or derivative work thereof; or
- iv. use Identified Software in the development of a derivative work of the Product.

As used herein, (i) Identified Software includes, without limitation, Publicly Available Software and means software which is licensed pursuant to terms that (1) create, or purport to create, obligations for B&K, its affiliates or its suppliers with respect to the Product or a derivative work thereof, or (2) grant, or purport to grant, to any third party any rights or immunities under B&K', its affiliates' or its suppliers' intellectual property or proprietary rights in the Product or a derivative work thereof and (ii) Publicly Available Software means any software that requires as a condition of use, modification and/or distribution of such software that other software incorporated into, derived from or distributed with such software be (1) disclosed or distributed in source code form; (2) be licensed for the purpose of making derivative works; or (3) be redistributable at no charge.

#### 4. PAYMENT

- (a) Net payment is due upon delivery unless otherwise agreed between B&K and Buyer in writing. All payments shall be made to the designated B&K' address. If deliveries are made in installments, each installment shall be separately invoiced and paid for when due. No discount is allowed for early payment unless agreed to in writing by B&K. Interest will accrue on all late payments, at the rate of 18% per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.
- (b) All shipments, deliveries and performance of work agreed to by B&K shall at all times be subject to the credit approval of B&K. If, in B&K's judgment, the Buyer's financial condition at any time does not justify production or delivery on the above payment terms, B&K may alter the terms of payments, such as require full or partial payment in advance or other payment terms as condition for delivery, and B&K may suspend, delay or cancel any credit, delivery or any other performance by B&K.
- (c) Payment by Buyer of non-recurring charges, as may be made to B&K for special design, engineering or production materials required for B&K' performance on orders deviating from B&K' established product line, shall not convey title to either the design or special materials, but title shall remain in B&K.
- (d) Buyer shall not offset, withhold or reduce any payment(s) due by it to B&K. The payment of fees and charges is a covenant of Buyer that is independent of the other covenants made by the parties hereunder.
- (e) If B&K incurs exchange rate losses due to Buyer's failure to pay when payments are due, B&K shall be entitled to equivalent compensation from Buyer for such losses.
- (f) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, B&K shall have the right to refuse delivery of any Products until payments are brought current and B&K may suspend, delay or cancel any credit, delivery or any other performance by B&K. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law or in equity for Buyer's default.

#### 5. DELIVERY AND QUANTITIES

- (a) Products shall be delivered EX WORKS (Incoterms 2000) B&K's manufacturing facility, or other facility as designated by B&K, unless otherwise agreed in writing between B&K and Buyer. Delivery

dates communicated or acknowledged by B&K are approximate only, and B&K shall not be liable for, nor shall B&K be in breach of its obligations to Buyer because of any delivery made within a reasonable time before or after the stated delivery date. B&K agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that the Buyer provides all necessary order and delivery information sufficiently prior to the agreed delivery date.

- (b) In the event the Buyer contests delivery, the Buyer must request a proof of delivery from B&K within ninety (90) days of the date of B&K's invoice, otherwise delivery shall be deemed completed.
- (c) Buyer will give B&K written notice of failure to deliver and thirty (30) days within which to cure. If B&K does not cure within thirty (30) days, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the Purchase Order.
- (d) Title and risk of loss shall pass to Buyer upon B&K's delivery in accordance with the applicable Incoterm.
- (e) If Buyer fails to take delivery, then B&K may deliver the Products in consignment at Buyer's costs and expenses.
- (f) In the event of shortages, B&K may allocate Products among its customers.

#### 6. CUSTOM PRODUCT

B&K shall have exclusive rights to goods designed and manufactured for the unique needs of Buyer, to Buyer's specifications or requirements, such as an ASIC or FPGA or to military specifications ("Custom Product"). B&K shall retain title to and possession of designs, masks and database tapes. Individual segments or parts of Custom Product designs are the property of B&K and may be used by B&K in other designs and may not be used by Buyer except as a part of Custom Product designed and manufactured by B&K. Prices and/or schedules are subject to increase by B&K if any specifications are revised or supplemented or there are unforeseen difficulties with the design.

#### 7. RESCHEDULING AND CANCELLATION

No order, Agreement or any part thereof may be rescheduled or canceled without B&K's prior written consent.

#### 8. NON ATTRIBUTABLE FAILURES

B&K shall not be liable for any failure or delay in performance if

- (i) such failure results from the fact that B&K's manufacturing volume of the Products concerned is lower than anticipated due to interruptions in the manufacturing process; or
- (ii) such failure does not result from its fault; or
- (iii) such failure is caused by Force Majeure as defined below or by law.

In case of such a non-attributable failure, the performance of the relevant part(s) of the Agreement will be suspended for the period such non-attributable failure continues, without B&K being responsible or liable for any damage resulting therefrom to Buyer.

The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond B&K's reasonable control - whether or not foreseeable at the time of the Offer or Confirmation - in consequence of which B&K cannot reasonably be required to execute its obligations. Such circumstances or occurrences include but are not restricted to: acts of God, war, civil war, insurrections, strikes, fires, floods, earthquakes, labor disputes, epidemics, governmental regulations and/or similar acts, freight embargoes, non-availability of any permits, licenses and/or authorizations required, defaults or delays of suppliers or subcontractors and/or inability or impracticability to secure transportation, facilities, fuel, energy, labor, materials or

components. In the event that the Force Majeure extends for a period of five consecutive months (or in the event that the delay is reasonably expected by B&K to extend for a period of five consecutive months), B&K shall be entitled to cancel all or any part of the Agreement without any liability to B&K. In the event B&K's production is curtailed, for any reason, B&K shall have the right to allocate its available production, in its sole discretion, among its various customers.

#### 9. LIMITED WARRANTY AND DISCLAIMER

- (a) B&K warrants that under normal use the Products, excluding any software, prototypes, risk production units (as defined in this Article 9 (a) below), experimental Products, beta testing Products and samples of newly developed Products, shall, at the time of delivery to Buyer and for a period of twelve (12) months from the date of delivery (or any legally imposed extension), be free from defects in material or workmanship and shall substantially conform to B&K's specifications for such Product, or such other specifications as B&K has agreed to in writing, as applicable. All Custom Products manufactured and/or delivered prior to both parties' written acceptance of the prototypes thereof ("risk production units"), all software, prototypes, experimental Products, beta testing Products and samples of newly developed Products, shall be AS IS WITHOUT WARRANTY OF ANY KIND. B&K's sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at B&K's option, either to the replacement or repair of a defective or non-conforming Product or to an appropriate credit for the purchase price thereof. B&K will have a reasonable time to repair, replace or credit. The non-conforming or defective Products shall become B&K's property as soon as they have been replaced or credited for.
- (b) Buyer may ship Products returned under warranty claims to B&K's designated facility only so long as the returns are in conformance with B&K's then-current Return Material Authorization policy and are accompanied by a statement of the reason for the return on a Return Material Authorization form issued by B&K. Where warranty adjustment is made, B&K will pay for freight expenses. Buyer shall pay for returned Products that are not defective or non-conforming together with the freight, testing and handling costs associated therewith.
- (c) Notwithstanding the foregoing, B&K shall have no obligations for breach of warranty if the alleged defect or non-conformance is found to have occurred as a result of environmental or stress testing, misuse, neglect, improper installation, or accident or as a result of improper repair, alteration, modification, storage, transportation or improper handling.
- (d) **THE EXPRESS WARRANTY GRANTED ABOVE SHALL EXTEND DIRECTLY TO BUYER AND NOT TO BUYER'S CUSTOMERS, AGENTS OR REPRESENTATIVES. EXCEPT FOR WARRANTY OF TITLE. THE EXPRESS WARRANTY GRANTED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ALL OTHER WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED BY B&K.**
- (f) Subject to article 11, the foregoing states the entire liability of B&K in connection with defect or non-conforming Products supplied hereunder.

#### 10. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- (a) B&K, at its sole expense, shall: (i) defend any legal proceeding brought by a third party against Buyer to the extent that the proceeding includes a claim that any Product (excluding software) furnished by B&K under the Agreement directly infringes the claimant's patent, copyright, trademark, or trade secret; and (ii) hold Buyer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.
- (b) B&K shall have no obligation or liability to Buyer under Section (a) (1) if B&K is not: (i) promptly

notified in writing of any such claim; (ii) given the sole right to control and direct the investigation, preparation, defense and settlement of such claim, including the selection of counsel; and (iii) given full reasonable assistance and cooperation by Buyer in such settlement and defense; (2) to the extent that any such claim arises from: (i) modification of the Product if the claim of infringement would have been avoided by use of the unmodified Product; (ii) design, specifications or instructions furnished by Buyer; or (iii) the combination of the Product with any other product, service or technology; or (iv) the use of the Product or any part thereof in the practice of a process; (3) to the extent the claim is based directly or indirectly upon the quantity or value of products manufactured by means of the Product or upon the frequency of use or the amount of use of the Product irrespective of whether such claim alleges the Product as such, or its use, infringes or contributes to the infringement of any such IPR; (4) for unauthorized use or distribution of the Product or use beyond the specifications of the Product; (5) to the extent any such claim arises from Buyer's manufacture, use, sale, offer for sale, importation or other disposition or promotion of the Product after B&K's notice to Buyer that Buyer should cease any such activity, provided such notice shall only be given if the Product is, or in B&K's opinion is likely to become, the subject of such a claim of infringement; or (6) for any costs or expenses incurred by Buyer without B&K's prior written consent; or (7) to the extent the claim is based on any prototypes, risk production units, or software; (8) to the extent any such claim arises from any infringement or alleged infringement of any patent, copyright, trademark, or trade secret or other intellectual property rights covering a standard set by a standard setting body and/or agreed between at least two companies, or (9) for infringement of any third party's intellectual property rights covering the manufacture, testing or application of any assembly, circuit, combination, method or process in which the Product may have been used. Buyer shall indemnify B&K against and hold B&K harmless from any damages or costs arising from or connected with such claims of infringements and shall reimburse all costs incurred by B&K in defending any claim, demand, suit or proceeding for such infringement, provided B&K gives Buyer prompt notice in writing of any such suit or proceeding for infringement.

- (c) If any Product is, or in B&K's opinion is likely to become, the subject of a claim of infringement as referred to under clause 10 (a) above, B&K shall have the right, without obligation and at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product; (ii) replace or modify the Product in such a way as to make the modified Product non-infringing; or (iii) terminate any Agreement to the extent related to such Product. In the event of any such termination, B&K shall repurchase all Products, in Buyer's possession at the time of such termination, which are then subject to the claimant's continuing claim of infringement. The repurchase price shall be subject to reasonable depreciation.
- (d) **SUBJECT TO ARTICLE 11, THE FOREGOING STATES B&K'S ENTIRE LIABILITY AND OBLIGATION TO BUYER OR ITS MEDIATE OR IMMEDIATE CUSTOMERS AND BUYER'S SOLE REMEDY WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.**

#### 11. LIMITATION OF LIABILITY

- (a) **NO PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR LOST SAVINGS) ARISING OUT OF ANY AGREEMENT WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF SUCH PARTY HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL B&K BE LIABLE FOR EXCESS PROCUREMENT COSTS AND REWORK CHARGES.**
- (b) B&K's aggregate liability towards Buyer under any Agreement shall not exceed (1) the lesser of (a) the amount actually received by B&K in the twelve (12) months immediately preceding the event giving rise to any liability for the Products causing any liability and (b) fifty (50) thousand Euros, but (2) in case of liability for delay or non-delivery of Products, the purchase price under the relevant Agreement of the delayed or not delivered Products concerned.

- (c) B&K's Products are not designed for use in life support equipment or other application where malfunction of an B&K Product can reasonably be expected to result in a personal injury. B&K's customers using or selling B&K's Products for such use do so at their own risk and agree to fully indemnify B&K for any damages resulting from such use or sale.
- (d) Any claim for damages must be brought by Buyer within ninety (90) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim.
- (e) The limitations set forth above in this Section 11 shall only apply to the extent permitted by applicable law and shall not apply to the extent Buyer's damage is caused by B&K's gross negligence or willful misconduct.

## 12. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by B&K is the confidential information of B&K. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

## 13. COMPLIANCE WITH LAWS

Each party hereto represents that it is duly authorized to enter into the Agreement and represents that with respect to its performance hereunder, each will comply with all applicable federal, state and local laws, including, but not limited to those pertaining to U.S. Export Administration or the export or import controls or restrictions of other applicable jurisdictions.

If the delivery of Products or services under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, B&K may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and B&K may even terminate the Agreement, without incurring any liability towards Buyer.

Furthermore, if an end-user statement is required, B&K shall inform Buyer immediately thereof and Buyer shall provide B&K with such document upon B&K's first written request; if an import license is required, Buyer shall inform B&K immediately thereof and Buyer shall provide B&K with such document as soon as it is available.

By accepting B&K's Offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

## 14. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of B&K. Buyer hereby waives any and all rights to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer and B&K may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

## 15. GOVERNING LAW AND FORUM

All Offers, Confirmations and Agreements are governed by and construed in accordance with the laws of the Netherlands. For determination of any and all disputes arising out or in connection with such Offer, Confirmation or Agreement, Buyer submits, for the exclusive benefit of B&K, to the jurisdiction of the competent court(s) of 's-Hertogenbosch, the Netherlands. The United Nations Convention on Contracts for

the International Sale of Goods shall not apply to any Offer, Confirmation or Agreement.

16. LIABILITY FOR INJURY OR LOSS

The Buyer shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents, or subcontractors of the Buyer at B&K's premises, and the Buyer shall indemnify and hold harmless B&K from and against all loss, liability, and damages arising from or caused directly or indirectly by any act or omission of such agents, employees, or subcontractors of the Buyer; and Buyer shall maintain such insurance as will protect B&K against the aforementioned risks and against any claims under applicable law.

17. BREACH AND TERMINATION

Without prejudice to any rights or remedies B&K may have under the Agreement or at law, B&K may, by written notice to Buyer, terminate with immediate effect the Agreement, or any part thereof, without any liability whatsoever, if:

- (i) Buyer fails to make payment for any Products to B&K when due;
- (ii) Buyer fails to accept conforming Products supplied hereunder;
- (iii) a voluntary or involuntary petition in bankruptcy or winding up is filed against Buyer, any proceedings in insolvency or bankruptcy (including reorganization) are instituted against Buyer, a trustee or receiver is appointed over Buyer, any assignment is made for the benefit of creditors of Buyer; or
- (iv) Buyer violates or breaches any of the provisions of these Terms and Conditions.

Upon occurrence of any of the events referred to above under (i) through (iv), all payments to be made by Buyer under the Agreement shall become immediately due and payable.

In the event of cancellation, termination or expiration of any Agreement the terms and conditions destined to survive such cancellation, termination or expiration, which shall include without limitation Articles 8, 9, 10, 11 and 12, shall survive.

18. PRODUCT AND PRODUCTION CHANGES

B&K reserves the right to make at any time Product and/or production changes. In such event B&K represents that said changes shall not negatively affect form, fit or function of the Products and their performance characteristics.

19. DISCONTINUATION OF PRODUCT

B&K reserves the right to discontinue manufacturing and sale of Products at any time. If however at any time during the term of an Agreement under which B&K sells and Buyer purchases on a regular basis Products, such regularly sold and purchased Products are to be permanently discontinued ("Discontinued Product"), B&K shall use its reasonable commercial efforts to give Buyer prior written notice of such discontinuance and shall use reasonable commercial efforts to accept orders for such Discontinued Product.

20. SEVERABILITY

In the event that any provision(s) of the Agreement or these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions hereof.

21. WAIVER

The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from any Offer, Confirmation or Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from any Offer, Confirmation or Agreement or by any related document or by law.



22. NOTICES

All notices or communications to be given under this Agreement shall be in writing and shall be deemed delivered upon hand delivery, confirmed facsimile communication, or three (3) days after deposit in the mail of the home country of the party, postage prepaid, by certified, registered, first class or equivalent mail, addressed to the parties at their addresses set forth on the Offer, Confirmations and/or Agreements.

23. ATTORNEYS' FEES

Should a dispute arise from the subject matter of any Offer, Confirmation or Agreement, the prevailing party in any resulting litigation shall be reimbursed by the other party for any and all reasonable attorneys' fees and expenses incurred.

24. RELATIONSHIP OF PARTIES

The Parties hereto intend to establish a relationship of buyer and seller and as such are independent contractors with neither party having authority as an agent or legal representative of the other to create any obligation, express or implied, on behalf of the other.

25. MODIFICATIONS AND CHANGES

B&K reserves the right to make any amendments, modifications or changes to these Terms and Conditions at any time. Such amendments, modifications and changes shall have effect (1) to all Offer, Confirmations and Agreements referring to such amended, modified or changed Terms and Conditions as from the date of such Offer, Confirmation or Agreement, and (2) to any existing Agreement thirty (30) days from notification of such amendment, modification or changes by B&K to Buyer, unless Buyer has notified B&K within such 30 days period that it objects thereto.

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