

Humboldt Wedag, Inc.

GENERAL TERMS AND CONDITIONS FOR THE SALE OF SPARE PARTS

The following terms and conditions ("General Terms and Conditions") apply to all spare parts quotations submitted by Humboldt Wedag, Inc. ("Vendor") to a customer ("Customer") and form integral and binding part of the contractual relationship between Customer and Vendor.

§ 1 Effective Date of Contract

An enforceable contract between Customer and Vendor ("Contract") shall arise, become effective, and be mutually binding on the day ("Effective Date") when Vendor signs and submits an order confirmation, or a signed copy of the Customer's purchase order or otherwise notifies the Customer by e-mail or other sufficient documentary form that the Vendor agrees to the Customer's purchase order ("Order Confirmation"). The Order Confirmation including these General Terms and Conditions shall be the sole and only Contract document.

Customer and Vendor agree that a Contract has been established even if Customer's purchase order and Order Confirmation deviate in their contents except if the Customer contested the Vendor's Order Confirmation in writing or by telefax or e-mail within one week upon receipt of the Order Confirmation. If an Order Confirmation is contested by the Customer, a Contract shall not be deemed established until the parties agree to a content of the Order Confirmation acceptable to both parties. Such acceptable Order Confirmation shall be re-issued by the Vendor and the Contract becomes effective on that day.

These General Terms and Conditions apply to the Contract. General terms and conditions of Customer, if any, shall not become applicable.

§ 2 Price Basis

The Contract price shall be a fixed net price including all materials and labor which the Vendor needs for performance of his contractual duties.

For domestic supplies within the U.S.:

The Contract price shall be based on FCA Vendor's workshop or packing station (according to ICC Incoterms 2010, publication no. 715E) including truck packing.

For international supplies:

The Contract price shall be based on FOB any suitable seaport of Vendor's choosing (according to ICC Incoterms 2010, publication no. 715E) including seaworthy packing.

§ 3 Taxation

The Contract price does not include any taxes applicable to the Contract and the Vendor's performance of such. If any taxes or similar levies will be raised in due respect of Vendor performing the Contract, such taxes or similar levies shall be paid either directly by Customer to the imposing tax authorities or the Vendor may revise his invoice by grossing up the amount by the tax amount or Customer shall reimburse Vendor against a debit note in addition to the Contract price.

§ 4 Currency

The Contract price shall be stated in the official currency of the United States of America, i. e. the U.S. Dollar (currency sign: \$ / banking code: USD).

§ 5 Terms of Payment

If not otherwise stipulated in the Order Confirmation, payment is to be made 100% net cash, within 30 days after receipt of transport documents and commercial invoice.

§ 6 Delay Interest

Irrespective of the particular applicable terms of payment, the Vendor shall become entitled to charge the Customer in addition to the Contract price delay interest of 2% of the invoice amount per month, or part thereof, of delayed payment in the event that the payment is not made by Customer by the applicable due date.

§ 7 Assignment

The Contract shall be personal to each of the parties and shall not be assigned or transferred by Customer to a third party or affiliate without first obtaining the prior approval in writing of Vendor. The contracting of sub-suppliers, in order to perform Vendor's obligations under the Contract shall, however, be Vendor's right notwithstanding the above.

Vendor shall have the right to assign the Contract with all its rights and obligations to any affiliate with the prior written consent of the Customer which shall not be unreasonably withheld.

§ 8 Country of Origin

The supplies may be sourced by Vendor from global producers, however, in compliance with the U.S. rules and restrictions on particular countries.

§ 9 Design Rules and Standards

The supply design follows the rules and standards applicable for the United States of America, including but not limited to ANSI, ASME, ASTM, NEMA and the MSHA and OSHA code.

All weights, dimensions, physical or other scientific figures, whatsoever, shall be construed and stated according to the metric system or US system as indicated.

The Vendor reserves the right to refuse to offer, withdraw from offering, abort manufacturing/procuring, or recall any supplies, in part or in full, if the Vendor has reasonable doubt about the supplies' quality, fitness, or safety. The Customer shall grant the Vendor a reasonable amount of time to suggest an adequate substitute product, and the Vendor shall find and offer a substitute product as soon as possible. The Customer shall not be entitled to claim damages for any expenses, costs, and losses, whether direct or indirect, that the Customer might incur as a consequence, including, but not limited to delayed delivery, change of purchase price, change of freight costs, loss of production, loss of opportunity, loss of sales, loss of time, etc.

§ 10 Language

All correspondence, documents, drawings and all technical documentation that comes along with the supplies will be furnished in English language.

§ 11 Delivery Time

Supplies shall be delivered within the time indicated in the Order Confirmation.

The Customer agrees that Vendor shall have the authority to warehouse the supplies on behalf and account of Customer, in part or in full, in the event that the delivery does not take place within the agreed delivery time for reasons outside of Vendor's control or responsibility, and such warehousing shall be considered Vendor's fulfillment of the Contract in lieu of the originally agreed delivery terms.

§ 12 Packing Instructions

The products will be securely packed for shipment to the delivery address (indicated in the Contract or to be advised later on).

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The products shall be labelled in accordance with Customer's instructions and any applicable laws, rules and regulations or requirements of the carrier, and packed and secured according to industry practice.

Customer shall not be obliged to return to Vendor any packaging or packing materials for the products if products are accepted by Customer, unless this is required by local legislation or has been agreed otherwise in the individual Contract.

§ 13 Shipping Instructions

The Contract number and Vendor's project number will be noted on all invoices and bills of lading or other transport documents. Vendor shall provide Customer or another person or entity designated by Customer with appropriately completed clean bills of lading (or copies) or other transport documents and other documents reasonably requested by Customer to enable it or its designated person or entity to claim the supplies from the carrier.

Weights and dimensions of the packages shall be notified to Customer's logistics department prior to the agreed delivery time.

§ 14 Warranty

The Vendor warrants that the supplies are free from defects in quality and title for a period of 12 (twelve) months from the date of Vendor's notification of readiness for shipment, respectively, notification of warehousing, or of 18 (eighteen) months from the Effective Date, whichever is the earlier ("Defects Liability Period").

The Customer shall immediately upon receipt on plant site examine the delivered supplies in a workmanlike manner in order to detect all apparent defects, if any. If the Customer fails to carry out such examination, the rights under this warranty agreement are forfeited for apparent defects, which could have been detected during such examination.

During the complete Defects Liability Period the Customer is obliged to notify the Vendor without undue delay upon any findings indicating a defect. The Customer is obliged to separate any such parts of the supplies and store them or send them back for Vendor's inspection as agreed upon.

Defects of parts of the supplies shall at the Vendor's discretion be rectified or the defective parts of the supplies shall be replaced by the Vendor to the following effect:

a) The Defects Liability Period for rectified parts of the supplies shall be extended by the time period starting from the date of Customer's written notice of defect until the date of completion of rectification of the relevant parts of the supplies.

b) The Defects Liability Period for replaced parts of the supplies is equivalent to the original Defects Liability Period defined above and shall count from the date of replacement or, at the latest, from the date of re-delivery as per shipping document.

In cases of extension either due to rectification and/or replacement such extended Defects Liability Period shall expire at the latest 12 (twelve) months after the original Defects Liability Period expired.

Rectification and/or replacement of defective parts of the supplies shall be the sole, exclusive, and final remedy for any warranty claim. All indirect or consequential damages which the Customer may suffer due to any defects are expressly excluded, save in the case of fraud, fraudulent acts, willful misconduct or criminal actions by the Vendor.

The Vendor is only obliged to rectify any defect provided that the respective parts of the supplies were stored and handled during transit and on site with due diligence and according to the Vendor's documentation and instructions. The Defects Liability does not cover normal wear and tear or corrosion.

Using a defective part may cause further damage to such part or damage to other property or the environment and may endanger the

health and life of persons in the area. The Vendor shall not be held liable for any losses, damages, injuries or deaths arising from the usage of a defective part. If a defect – which was found by the Customer during the examination or during the Defects Liability Period – could possibly get worse and/or cause damage or loss to other supplies or property, whatsoever, or to health, body or life or to the environment, the Customer is obligated to take all necessary steps to secure the situation, respectively, to mitigate the loss or damage. The Customer shall notify Vendor within ten days, in writing, of all such steps taken. Subject to the receipt of timely notice, the Vendor shall indemnify the Customer for the reasonable cost of any reasonable mitigation efforts undertaken by the Customer.

In the unlikely event that (i) a defective part must be repaired or replaced immediately as a matter of urgency, or (ii) the Vendor does not react to Customer's notification of defect within a reasonable period of time, then the Customer has the right to carry out such repair or replacement by himself ("Substitute Performance"). The reasonably incurred direct costs for material and labor of a Substitute Performance will be compensated by the Vendor, and the Customer is obligated to act in good faith to minimize such expenses. In any case, the Customer has to bear the risk of such repair or replacement including, but not limited to, the case of negligent or willful acts or omissions by the Customer's staff or any of Customer's sub-contractors.

The Customer forfeits its rights under the Vendor's Defects Liability in the event that Customer (i) does not follow the Vendor's installation, commissioning, operating, storage, and/or maintenance manuals, (ii) does not notify the Vendor about a defect immediately upon discovery of such defect, (iii) repairs or replaces the defective part by himself, or by someone other than Vendor, without rightfully exercising a Substitute Performance, (iv) does not carry out a mutually agreed repair or replacement according to Vendor's repair or replacement instructions, (v) gives Vendor no reasonable opportunity to remedy the defect within a reasonable period of time, (vi) modifies, alters, changes any part of the supplies without Vendor's written consent, or (vii) otherwise fails to exercise the reasonable care expected of an industry professional.

§ 15 Wear Guarantees

The Vendor can offer wear guarantees only upon calculating the relevant wear factor applicable for the Customer's application. Such wear guarantees will be set out in the Order Confirmation or in a revised Order Confirmation at a later date. In case of premature failure of such wear parts during operation, the Vendor shall decide to regenerate or to replace such failing wear part and shall bear a share of the respective costs on a *pro rata temporis* basis covering the guaranteed operational hours less the actually performed hours (the other share of the costs is to be borne by the Customer). Wear guarantees expire if the feed material properties or other process related parameters related to wear behavior initially used for Vendor's wear factor calculation change during the wear guarantee period.

§ 16 Liquidated Damages

In the unlikely event of delayed delivery, and only if delayed delivery is caused solely by an act or omission of the Vendor, the Vendor shall pay 0.5% of the Contract value per full week of delay, up to a maximum of 5% of the Contract price for a single delay and for all delays combined. The payment of such liquidated damages shall be the exclusive and satisfactory remedy of the Customer for delayed delivery. If the delayed delivery (1) is caused by a force majeure event beyond Vendor's control, or (2) does not cause a business interruption or other quantifiable damage to the Customer, the Vendor shall not be held liable for such delay.

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§ 17 Confidentiality

Over the lifecycle of the Contract, the Parties might exchange various sensitive information and data, including but not limited to technical data, design data, layouts, process data, business related information, market related information, customer related information, project related information, etc. ("Information") on various media being intangible and/or tangible, including but not limited to verbal transmission, electronic transmission, electronic devices or media for electronic devices, e-mail, telefax, letter, drawings, paper, etc. ("Media") in order to mutually fulfill the Contract.

The Parties shall not disclose, distribute, copy, exploit or use, in any form, any Information, except as permitted by the other Party or as inevitably necessary to fulfill the Contract. Ownership of the relevant Media, as far as such Media can be legally owned, and intellectual property of any Information remains, howsoever, with the legal owner respectively intellectual proprietor at the time of disclosing and both Parties agree that ownership and intellectual property shall under no circumstances pass to the other Party howsoever. No licenses or rights under any patent, copyright, trademark, intellectual property, or similar right or legal construct are granted or transferred, neither expressly nor implied, by this Contract, except as for the right to use such Information to fulfill the Contract.

The Parties undertake to keep all and any Information belonging to the disclosing Party (including the terms and conditions of the Contract) strictly secret and confidential and neither Party shall disclose or permit any such Information to be disclosed or given access thereto to any third party unless permitted in writing by the disclosing Party or unless inevitably necessary to fulfil the Contract. This confidentiality agreement shall extend to all officers, directors, shareholders, representatives, successors, affiliates, agents, servants, employees, contractors, and assigns of the Parties. Each Party has the right to injunctive relief in the event of any breach or threatened breach of this confidentiality agreement.

Each Party shall protect such Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care.

The giving of access to and disclosure of Information shall not be construed as express or implied representation made as to the accuracy or completeness of such.

If the receiving Party is uncertain as to whether any information received is considered Information defined hereinabove, it must treat the information as if it was such Information and as not being in the public domain unless and until the disclosing Party agrees in writing that the information is in the public domain.

The receiving Party shall not be bound to keep confidential any Information if and to the extent that:

- the information is, or becomes part of the public domain otherwise than by breach of this Contract;
- the information becomes known to the receiving Party from a source other than the disclosing Party;
- the information is disclosed by disclosing Party to a third party without restrictions on its disclosure;
- the information is independently developed or discovered by the receiving Party not as a result of any activities relating to the Purpose;
- the receiving Party may disclose Information in accordance with judicial or other governmental order, provided it shall give the disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent; or
- the disclosing Party has authorized in writing the disclosure of the relevant Information.

The Parties acknowledge that any damage resulting from a breach of the confidentiality agreement might not be calculated or appraised in a mathematical way due to the complex and intangible nature thereof. However, the Parties acknowledge that their Information is of significant value and any breach of the confidentiality agreement is likely to result in substantial disadvantages, losses and/or damage that cannot be defined or reasonably foreseen at the time of signing this Agreement. Therefore, the Parties agree that liquidated damages of USD 50,000.00 per incident of breach of this confidentiality agreement shall be paid by the breaching Party to the damaged Party, the damage of which shall be deemed to have taken place by a breach without the damaged Party having to produce proof if and to which extent it may have suffered such damage. The Parties further agree that the above agreed liquidated damages shall not be the exhaustive and conclusive relief and compensation to a damaged Party, but that the liquidated damages rather are an additional relief and compensation to any other relief and/or compensation a damaged Party might seek under this Contract and under applicable laws.

The Parties agree that any tangible or appropriate intangible media shall, after the Purpose is fulfilled or at any other time as required in writing by the disclosing Party, be destroyed or returned to the disclosing Party as the latter decides. However, for legal purposes, as far as required by law, the receiving Parties may archive Media including the therein contained Information in order to fulfill governmental requirements.

The rights to use Information as granted under this confidentiality agreement cease to exist upon full performance or other termination of the Contract, not affecting any other rights provided by law however, whereas the obligations entailed by this confidentiality agreement survive any termination and remain binding without time limitation.

§ 18 Termination

Without prejudice to any other rights or remedies and subject to undertaking the remediation procedure as described hereafter, either party shall be entitled to terminate the Contract immediately by written notice to the other party, in case:

(i) The other party is in breach of any of its obligations under this Contract and the party in default has failed to commence to remedy such breach within 30 days of a notice having been served by the first party specifying the breach and requiring its rectification or such defaulting party thereafter fails to promptly and diligently carry out such remedy (or to complete such remedy within 60 days after the date of the notice); or

(ii) The Vendor is in material breach of its obligations in respect of the Contract, Customer shall give Vendor written notice and Vendor shall promptly, within 24 hours, begin action and will cure the default within 10 days, if feasible, or if completion of such cure is not feasible within such 10 day period, Vendor shall promptly and diligently carry out such cure to completion (and complete such cure within 60 days after the date of Customer's notice). If Vendor fails to cure such default, Customer may terminate the Contract in whole or in part. In such event, Vendor's liability shall be limited to additional direct excess re-procurement costs incurred by Customer to purchase substitute products for the terminated products to a capability not exceeding that provided in the specifications, at a cost not exceeding the price for the terminated portion of the order included in the Contract.

Without prejudice to any other rights or remedies, either party shall be entitled to terminate this Contract immediately on written notice upon the occurrence of any of the following events:

(iii) A petition is presented or proceedings are commenced or an effective resolution is passed for the winding-up, insolvency, judicial management, dissolution or bankruptcy of the other party, or a petition is presented or proceedings are commenced or an effective resolution

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is passed for the appointment of a liquidator, receiver, administrator, trustee, judicial manager or similar officer of the other party, or (iv) The other party ceases, or threatens to cease, without good reason to carry on its business or any substantial part thereof or the other party is subject to a change of ownership of its shares resulting in 50% or more of the issued share capital of the company becoming legally or beneficially the property of a new owner, unless such new owner is an existing parent company or affiliate of the party which presently owns the party to this Contract which is subject to the change of ownership.

§ 19 INDEMNITY

A PARTY IN DEFAULT, NOTWITHSTANDING ITS LIMITATION OF LIABILITY UNDER THE CONTRACT, SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, AFFILIATES, SUCCESSORS, AND ASSIGNS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, PENALTIES, FINES, LOSSES, COSTS OR OTHER LIABILITIES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY OR DEATH OF PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY OF THIRD PARTIES, CLAIMS FOR WRONGFUL DEATH, AND ALL RELATED LEGAL FEES, INCLUDING TO ENFORCE THIS INDEMNIFICATION, ETC. (COLLECTIVELY "LOSSES"), TO THE EXTENT DIRECTLY CAUSED BY NEGLIGENT ACTS OR OMISSIONS OR WILFUL MISCONDUCT IN PERFORMANCE OF THE CONTRACT BY THE PARTY IN DEFAULT. HOWEVER, A PARTY SHALL HAVE NO OBLIGATION TO THE OTHER PARTY AS TO THE EXTENT SUCH LOSSES ARE SOLELY ATTRIBUTABLE TO THE DEFAULT OF THAT OTHER PARTY.

§ 20 LIMITATION OF LIABILITY

THE PARTIES EXPRESSLY AGREE THAT THEIR RESPECTIVE RIGHTS, OBLIGATIONS AND LIABILITIES AS PROVIDED FOR IN THE CONTRACT AND THESE GENERAL TERMS AND CONDITIONS SHALL ALONE GOVERN THEIR RIGHTS, OBLIGATIONS AND LIABILITIES UNDER THE CONTRACT. ACCORDINGLY, THE REMEDIES PROVIDED UNDER THE CONTRACT IN RESPECT OF OR IN CONSEQUENCE OF ANY BREACH OF THE CONTRACT, ANY NEGLIGENT ACT OR OMISSION, DEATH OR PERSONAL INJURY OR LOSS OF OR DAMAGE TO ANY PROPERTY – SAVE IN THE CASE OF FRAUD, FRAUDULENT ACTS, WILFUL MISCONDUCT OR ILLEGAL ACTS – SHALL BE COMPREHENSIVE, CONCLUSIVE AND TO THE EXCLUSION OF ANY OTHER REMEDY THAT EITHER PARTY MAY HAVE AGAINST THE OTHER UNDER THE LAW GOVERNING THE CONTRACT.

THE VENDOR SHALL NOT BE HELD LIABLE FOR ANY INDIRECT, CONSEQUENTIAL OR SPECIAL LOSS OR DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF PROFIT, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF PRODUCTION OR FOR ANY FINANCIAL OR ECONOMIC LOSS, WHATSOEVER, THAT MAY BE SUFFERED BY THE CUSTOMER, EXCEPT IN CASES OF FRAUD, FRAUDULENT ACTS, WILFUL MISCONDUCT OR ILLEGAL ACTS BY THE VENDOR.

THE VENDOR'S TOTAL LIABILITY UNDER THE CONTRACT, INCLUDING BUT NOT LIMITED TO LOSSES, INDEMNITIES, WARRANTY AND GUARANTEE CLAIMS, STRICT LIABILITY, BREACH OF CONTRACT, DELAYED DELIVERY DAMAGES, LIQUIDATED DAMAGES, DAMAGE TO CUSTOMER'S PROPERTY, TERMINATION AND/OR CANCELLATION OF CONTRACT, LAWSUITS (INCLUDING ATTORNEY FEES), TORT AND/OR ANY OTHER RIGHTS OR CLAIMS UNDER CONTRACT, LAW, EQUITY OR OTHERWISE, SHALL BE LIMITED TO 10% OF THE TOTAL OF

THE AMOUNTS PAID TO VENDOR FOR THE PARTS PROVIDED HEREUNDER, EXCEPT IN CASES OF FRAUD, FRAUDULENT ACTS, WILFUL MISCONDUCT OR ILLEGAL ACTS BY THE VENDOR.

EACH AND ALL RIGHTS NOT ACTED ON BY THE CUSTOMER AGAINST THE VENDOR SHALL BE BARRED THE EARLIER OF (A) THREE YEARS AFTER THE CONTRACT CAME INTO FORCE, OR (B) HALF THE TIME OF ANY OTHERWISE APPLICABLE STATUTE OF REPOSE AND/OR STATUTE OF LIMITATIONS.

THE TERMS AND CONDITIONS OF THIS LIMITATION OF LIABILITY CLAUSE SHALL SURVIVE ANY TERMINATION OF THE CONTRACT.

§ 21 Insurance

The Vendor maintains insurance coverage at his discretion, copies of the policy faces and coverage limits of which can be made available to the Customer on request. The Vendor's insurance policies and coverage limits are deemed to be sufficient and accepted by the Customer.

The Vendor does not and will not change his existing insurance policies, contract other insurance policies, or co-insure the Customer or third parties unless specifically agreed in writing by the Vendor.

During the term of this Contract, Customer shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, commercial general liability in a sum no less than USD 5,000,000 with financially sound and reputable insurers. Upon Service Provider's request, Customer shall provide Service Provider with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this Contract. The certificate of insurance shall name Service Provider as an additional insured. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against Service Provider's insurers and Service Provider.

§ 22 Force Majeure

The Vendor shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Vendor including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of 180 days, Customer shall be entitled to give notice in writing to Vendor to terminate this Contract.

§ 23 Compliance with Law

Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Contract. Customer shall comply with all export and import laws of all countries involved in the sale of the parts ("Goods") under this Contract or any resale of the Goods by Customer. Customer assumes all responsibility for shipments of Goods requiring any government import clearance. Vendor may terminate this Contract if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

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§ 24 Governing Law

For the effectiveness, performance, termination, and interpretation of and legal judgment over the Contract and its terms and conditions, including the General Terms and Conditions, the federal laws of the United States of America and the state laws of Georgia shall apply, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction and without giving effect to the "United Nations Convention on Contracts for the International Sale of Goods" of April 11, 1980.

§ 25 Dispute Resolution

A party ("Complaining Party") that believes that the other ("Responding Party") is in breach of the Contract in any particular, shall deliver written notification to the Responding Party, setting forth in reasonable detail the breach for which the Complaining Party seeks redress, along with a specific request for relief. The Responding Party shall acknowledge receipt of the aforementioned notification in writing within 5 days and shall furnish a written reply detailing steps to resolve the matter within 10 additional calendar days. Upon receipt of the reply, the Complaining Party shall provide written notice to the Responding Party either that the dispute has been resolved satisfactorily or that the Complaining Party is invoking the escalation procedure set forth in this section within 5 days.

In the event that the parties are unable to resolve a dispute in the manner described in this section, each party agrees to designate a single representative to attempt to resolve the dispute via good faith direct discussions. Each party's representative shall have all necessary authority to bind the party contractually and to resolve the dispute. The designated representatives shall meet in an effort to resolve the dispute. If, after reasonable efforts to reach an amicable resolution, either party believes an impasse has been reached, it may elect to refer the dispute to mediation in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") including any applicable supplementary procedures for International Commercial Mediation. Each party shall be responsible for one-half of all costs and fees assessed by or through the AAA (including mediator fees).

If, after reasonable efforts to mediate the dispute, either party or the mediator declares in writing that an impasse has been reached, or if neither party elects to refer the dispute to mediation within 90 days following the commencement of the parties' good faith direct discussions, the dispute shall be submitted to, and determined by, binding arbitration under the Commercial Arbitration Rules of the AAA, including the Supplementary Procedures for International Commercial Arbitration. The arbitrator shall have no right to change, add to or subtract from any of the provisions of this Contract, shall not extend its authority where specifically limited herein and shall not exceed any limitations provided in this Contract. Any award rendered in such proceedings shall be final and binding on the parties thereto, and judgment may be entered thereon in any court having jurisdiction thereof, including the state and federal courts in Georgia. The arbitration shall be conducted by a single arbitrator, appointed by the parties or, failing agreement, appointed by the AAA. The arbitration shall be held in Atlanta, Georgia, in the English language. The award shall be final and there shall be no right of appeal. The arbitrator shall have the power to award costs including the costs of the arbitration. Each of the parties hereby irrevocably submits to the exclusive jurisdiction of any arbitration panel, appointed as provided above and sitting in Atlanta, Georgia. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of arbitration, as described above, in Atlanta, Georgia.

Any arbitration award rendered pursuant to this clause shall be final and binding on the parties and shall not be subject to appeal, and shall be enforceable in any court of competent jurisdiction.

§ 26 Miscellaneous

No waiver by Vendor of any of the provisions of this Contract is effective unless explicitly set forth in writing and signed by Vendor. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract 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.

In case of absence, ambiguity, contradiction and/or doubt, the terms and conditions set out in the Order Confirmation prevail over these General Terms and Conditions.

If one or more provisions of the Order Confirmation including the General Terms and Conditions are held to be ineffective, unenforceable or illegal under the applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable, effective, enforceable and legal substitution for such provision, then (i) such provision shall be excluded, (ii) the balance of the Order Confirmation including the General Terms and Conditions shall be interpreted as if such provision was so excluded and (iii) the balance of the Order Confirmation including the General Terms and Conditions shall remain effective, enforceable and legal in accordance with its terms.