



CITY OF MILPITAS

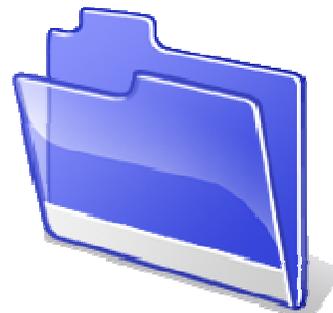
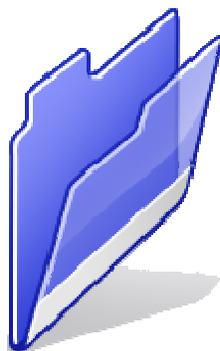
455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

08/15/2017

Agenda Item No. *10



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION





TERMS AND CONDITIONS OF SALE

Purchase of any goods and services (the “Goods”) sold by Lenco Industries, Inc. (“Lenco”) shall be subject to and expressly limited by the terms and conditions contained herein (the “Terms and Conditions”) and the Quotation (the “Quotation”) or other written communication of Lenco that refers to or incorporates the Terms and Conditions. In the event of any conflict between the Terms and Conditions and any other document, these Conditions of Sale shall prevail, unless otherwise specified in writing by Lenco.

1. Contract Formation; Acceptance.

- a. Buyer shall be deemed to have accepted the Terms and Conditions upon the date on which Buyer takes any of the following actions (such date, the “Acceptance Date”):
 - i. Signing and returning to Lenco a copy of the Quotation;
 - ii. Signing and delivering to Lenco a written purchase order or bid award following receipt of the Quotation or a bid response;
 - iii. Accepting delivery of all or any part of the Goods;
 - iv. Paying for all or any part of the Goods; or
 - v. Indicating in some other manner Buyer’s acceptance of the Terms and Conditions.
- b. Lenco hereby objects to and rejects the provisions of any purchase order or other document of Buyer’s that are in conflict or in addition to the provisions of the Terms and Conditions. Lenco’s performance and obligations are expressly conditioned upon Buyer’s acceptance of the Terms and Conditions, which Terms and Conditions, together with the Quotation, shall constitute the complete and exclusive contract between Lenco and Buyer. Any modification to the Terms and Conditions must be approved in writing by Lenco’s authorized representative.

2. Limited Warranty; Claims.

- a. Buyer assumes all risk and liability concerning the use of the Goods.
- b. Lenco warrants good title to the Goods and that the Goods, as delivered to Buyer, will substantially conform to the specifications set forth in any documentation or other manuals delivered together with the Goods (the “Documentation”) in all material respects for three years after the original purchaser of the Goods received delivery of the Vehicle from Lenco or an authorized Lenco distributor (the “Warranty Period”).
- c. Lenco-Manufactured Components. Lenco will pay for repair or replacement of components of the Goods manufactured by Lenco which prove to be defective during the Warranty Period, except that Lenco will not be responsible for (i) any damage to the Vehicle or any component of the Vehicle caused by negligence, misuse, alteration or accident or (ii) normal maintenance of the Goods or any component of the Goods. To be eligible for warranty coverage under this Section 2, Buyer must follow the Procedures for Submission of Warranty Claims and Authorization of Warranty Work set forth below.
- d. Components Manufactured by Others. If any component of the Goods (i) was manufactured by any person or firm other than Lenco and (ii) is the subject of a

written warranty by such other manufacturer, Lenco will assist Buyer in submitting to the manufacturer of any such component claims that such component proved to be defective during the applicable warranty period specified in the manufacturer's written warranty. Copies of all written warranties given by the manufacturers of parts or components of the Goods manufactured by persons or firms other than Lenco will either be furnished to Buyer at the time of delivery of the Goods or are available upon written request to us at 10 Betnr Industrial Drive, Pittsfield, MA 01201 or by e-mail to our Technical Services Manager, Mr. Steve Mix; e-mail: Steve@lencoarmor.com.

- e. The limited warranty set forth herein does not cover (i) use of the Goods in a manner inconsistent with these Terms and Conditions or with the Documentation (as the same may be amended, supplemented, or modified by Lenco from time to time); (ii) modification of the Goods by any party other than Lenco; (iii) damage to the Goods in any manner and by any cause other than the act or omission of Lenco; (iv) misuse or abuse of the Goods or Documentation relating thereto or improper storage thereof; (v) operation or maintenance of the Goods in environmental conditions outside the parameters designated by Lenco in the Documentation or elsewhere; or (vi) negligence or wrongdoing on the part of Buyer or any end users. This limited warranty shall run to Buyer only and not to any end user other than Buyer.
- f. Procedures for Submission of Warranty Claims and Authorization of Warranty Work. Except as otherwise specified below, warranty repairs or replacements during the Warranty Period for components of the Goods manufactured by Lenco may be made by either an authorized Lenco service center or any repair shop mutually acceptable to Lenco; in either case, the service center or repair shop must (i) contact Lenco before any repair or replacement is undertaken and (ii) receive Lenco's written approval of the repair or replacement and the service center's or repair shop's charges for such repair or replacement. Requests for Lenco's approval should be directed to Warranty Department, Lenco Industries, Inc., 10 Betnr Industrial Drive, Pittsfield, MA 01201, (Tel. (413) 443-7359; Fax (413) 445-7865 or e-mail: warranty@lencoarmor.com). Lenco reserves the right in any particular instance to require that repair or replacement of Lenco components be performed either at Lenco's factory in Pittsfield, Massachusetts or at an authorized Lenco service center. Buyer is solely responsible for freight or other transportation costs to and from Lenco's factory, an authorized Lenco service center or a repair shop performing repairs or replacements under this limited warranty.
- g. Subject to Buyer's compliance with Lenco's policies relating to the return of Goods under warranty set forth in Section 6 below, during the Warranty Period, Lenco will repair or replace, without charge, (i) any defective Goods, if originally provided by Lenco, and (ii) any Goods that do not substantially conform to the Documentation in all material respects. If Lenco is unable to repair or replace defective Goods or is unable to repair or replace the Goods so that they substantially conform to the Documentation in all material respects within a reasonable time, Lenco will, at Lenco's option, either replace the Goods with a functionally similar product or refund the fees paid for the Goods.
- h. THE FOREGOING LIMITED WARRANTY CONSTITUTES LENCO'S SOLE AND EXCLUSIVE LIABILITY, AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR ANY BREACH OF ANY WARRANTY OR OTHER DEFECT

OR NONCONFORMITY OF THE GOODS. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 2, LENCO MAKES NO, AND EXPRESSLY DISCLAIMS ANY AND ALL, WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY.

- i. IN NO EVENT SHALL LENCO BE LIABLE FOR ANY OF BUYER'S OR ANY THIRD PARTY'S SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING DAMAGES DUE TO LOSS OF USE, LOST PROFITS, LOSS OF GOODWILL, LATE OR NON DELIVERY, DEFECTIVE CONDITION, OR USE OF THE GOODS.
3. Certain Representations and Covenants of Buyer. Buyer hereby represents, warrants and covenants as of the Acceptance Date that:
- a. Organization, Authorization And Effect Of Agreement. Buyer (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (ii) is duly qualified or licensed to do business and is in good standing as a foreign corporation in each jurisdiction in which the character of the properties owned or leased by it or the nature of its business makes such qualification necessary, except for such of the foregoing in which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have or result in a material adverse effect on the authority or ability of Buyer to enter into these Terms and Conditions or to consummate the purchase of the Goods contemplated hereby (the "Purchase"), (iii) has the requisite power and authority to execute and deliver the Quotation, these Terms and Conditions and to consummate the Purchase, and (iv) has duly taken all necessary action required to be taken under applicable law for the due authorization of the execution and delivery by Buyer of the Quotation, these Terms and Conditions and the Purchase contemplated hereby.
 - b. These Terms and Conditions constitute a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their terms.
 - c. No Restrictions. There is no suit, action, claim, investigation or inquiry by any federal, state, local or foreign government, court, administrative, regulatory or other governmental agency, commission, or authority or any non-governmental United States or foreign self-regulatory agency, commission or authority or any arbitral tribunal ("Governmental Entity"), and no legal, administrative or arbitration proceeding pending or, to Buyer's knowledge, threatened against Buyer, with respect to the purchase or use of the Goods or products similar or related to the Goods, the execution, delivery and performance of the Quotation, these Terms and Conditions or the Purchase.
 - d. Noncontravention. The execution, delivery and performance by Buyer of the Quotation, which incorporates these Terms and Conditions, does not, and the consummation of the Purchase will not, conflict with, or result in any material violation of, or constitute a material default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligations or the loss of a material benefit or the incurrence of a material liability under, (i) any provision of the certificate of incorporation or

bylaws or comparable governing documents of Buyer, (ii) any law or order applicable to Buyer, (iii) to the knowledge of Buyer, any material Permit, if any, issued to Buyer under any laws or any orders relating to Buyer, (iv) the terms, conditions or provisions of any contract or agreement to which Buyer is a party, except as would not, individually or in the aggregate, reasonably be expected to have or result in a material adverse effect on the authority or ability of Buyer to enter into the Quotation and these Terms and Conditions or to consummate the Purchase.

- e. Approvals And Consents. No consent, approval or action of, filing with or notice to any Governmental Entity or other person is necessary or required under any of the terms, conditions or provisions of any law or order or any contract to which Buyer is a party for the execution and delivery by Buyer of the Quotation and these Terms and Conditions or the consummation by Buyer of the Purchase.
- f. Compliance with Laws. Buyer shall comply with all applicable laws relating to purchase and use of the Goods, including without limitation, those respecting the transportation, provision, resale, disposal and waste management of the Goods.
- g. Cooperation with Lenco. Upon Lenco's reasonable request, Buyer agrees to provide reasonable assistance to Lenco to facilitate Lenco's compliance with any laws applicable to Lenco.
- h. End Use/End-User. Sale of the Goods to Buyer may require consent of the U.S. Government. In order to purchase the Goods, Buyer may be required to, and upon request from Lenco will, provide written confirmation of Buyer's identity and to identify the specific end-user and end use of the Goods, as well as any person who will receive shipment of the Goods either within or without the United States for storage, modification, incorporation into another end-item or subsequent forwarding to the end-user. Buyer represents and warrants to Lenco that any information provided to Lenco by Buyer regarding the specific end user and end use of the Goods will be true and correct in all respects. Such information will be made available to Lenco within ten (10) days following receipt of Lenco's written request therefor.
- i. Export, Resale and Retransfer. Buyer represents and warrants that the Goods will be acquired by Buyer for its own use, and not with a view to the resale, and that Buyer has no present intention of selling the Goods. Buyer further represents that it does not have any contract, undertaking, agreement or arrangement with any person or entity to sell, export, resell or retransfer the Goods to any third person or entity. **THE GOODS MAY NOT BE SOLD, EXPORTED, RESOLD OR RETRANSFERRED WITHOUT THE PRIOR WRITTEN CONSENT OF THE U.S. GOVERNMENT AND LENCO. BUYER REPRESENTS AND WARRANTS THAT THE GOODS WILL NOT SOLD, EXPORTED, RESOLD OR RETRANSFERRED BY BUYER WITHOUT ALL REQUIRED CONSENTS, INCLUDING LENCO'S CONSENT AND ANY AUTHORIZATION OF A GOVERNMENTAL ENTITY.** Lenco shall not be held liable for Buyer's inability to sell or export the Goods.
- j. Financing. Buyer has and will have at the time of payment sufficient cash immediately available to pay the full price of the Goods to Lenco.

- k. Confidentiality. Except to the extent (i) authorized by the express prior consent of Lenco or (ii) required by law or any legal process, Buyer will not, directly or indirectly, at any time prior to or after the Purchase, use or exploit, or disseminate, disclose, or divulge to any person, firm, corporation, association or other business entity other than its affiliates or Representatives who are subject to the obligation to keep such information confidential to at least the same extent as Buyer hereunder, any Confidential Information and the same shall not be duplicated, removed by Buyer from Lenco's possession or premises or made use of other than in connection with the ordinary use of the Goods by Buyer. Buyer shall take commercially reasonable measures to protect Confidential Information received by it hereunder from disclosure. In the event of any loss of Confidential Information, Buyer will notify Lenco immediately. Buyer shall be responsible for any disclosure by any of its affiliates or Representatives of the Confidential Information and shall take all necessary measures (including but not limited to court proceedings) to restrain such parties from prohibited disclosure or use of the Confidential Information. "Confidential Information" shall mean any information of Lenco relating to Lenco's products, business or the goods, including, without limitation, technical data or know-how, specifications, prices and product reviews, whether or not marked as "confidential", these Terms and Conditions and any other information or procedures that are treated as or designated secret or confidential by Lenco. "Representatives" shall mean directors, officers, employees, agents, consultants, advisors, or other representatives of Buyer, including legal counsel, accountants and financial advisors.
4. Property Rights of Lenco. Lenco at all times shall retain its rights in all property owned by Lenco, including but not limited to any equipment, inventory, fixed assets and intellectual property owned by Lenco used to produce the Goods. Lenco's delivery of the Goods does not expressly, or by implication, grant Buyer any option to purchase any such property owned by Lenco or give to Buyer any license regarding the same.
- a. In the event the Goods, in the form delivered by Lenco, are found by a court of competent jurisdiction to infringe a patent or other Intellectual Property right in Buyer's country, Buyer shall give Lenco prompt written notice thereof, and Lenco, at its own discretion, shall either procure for Buyer the right to continue to use the Goods in Buyer's country, replace the allegedly infringing Goods with non-infringing Goods, or accept a return of the allegedly infringing Goods for a refund of the purchase price paid by Buyer. The foregoing states the entire liability of Lenco and sole and exclusive remedy of Buyer (and any party claiming by or through Buyer) with regards to any claim of patent or other Intellectual Property infringement. Buyer shall indemnify and hold Lenco, its subsidiaries and affiliates, and their respective successors and assigns, harmless against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind arising from claims of infringement of patent or other Intellectual Property rights on Goods specifically produced or modified at Buyer's request.
- b. "Intellectual Property" shall mean any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law,

contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

5. Inspection and Acceptance; Delivery.
- a. Lenco is responsible for making the Goods available for delivery within quoted lead times. Lenco's quoted lead time represent the time required between Buyer's placement of order and the availability of the completed Goods FOB Lenco's plant (or another location) as quoted. Lenco's quoted lead time applies to Buyer's new orders as well as increases on existing orders. If Buyer requests delivery prior to the quoted lead time, any charges to expedite the Goods will be at Buyer's sole expense. Notwithstanding the foregoing terms of this Section 5(a), Lenco hereby reserves the right to prioritize orders placed by the United States federal government and agencies related thereto and as such, Buyer agrees and acknowledges that Lenco's the quoted lead time is subject to change.
 - b. Lenco will notify Buyer when the Goods are ready for inspection and delivery. Lenco requires that Buyer inspect and accept the Goods at Lenco's factory in Pittsfield, Massachusetts unless otherwise agreed by Lenco in writing. Buyer will have a period of thirty (30) calendar days following notification from Lenco that the Goods are ready for inspection and delivery to inspect the Goods for deficiencies and notify Lenco in writing of either acceptance of the Goods or the existence, in Buyer's reasonable opinion, of deficiencies together with reasonable detail regarding such deficiencies.
 - c. Following notification by Buyer of any such deficiencies that are not disputed by Lenco, Lenco will repair or replace the deficient Goods within a reasonable period of time. In the event of a good faith dispute between Buyer and Lenco with regard to any deficiencies, Lenco will notify Buyer in writing within five (5) Business Days of becoming aware of the basis for the dispute and provide a description of its basis disputing Buyer's position concerning the deficiencies. Each of Lenco and Buyer will negotiate reasonably and in good faith for a period of thirty (30) days during which each shall continue performing its obligations under these Terms and Conditions unless and until such obligations expire or are terminated in accordance with these Terms and Conditions.
 - d. In the event that Buyer fails to provide to Lenco written notice of either acceptance or a deficiency within thirty (30) calendar days following notification from Lenco to Buyer that the Goods are ready for inspection and delivery, acceptance of such Goods will be deemed to have taken place on the thirtieth (30th) calendar day following such notification.
 - e. Acceptance by Buyer of part of the Goods specified in a purchase order will not be deemed to be an acceptance by Buyer of all of the Goods that are specified in the purchase order.
 - f. Following acceptance by Buyer of the Goods, Lenco will arrange for shipment of the Goods Ex Works to Buyer in a manner and with carrier selected by and will notify Buyer upon making the Goods available to the carrier. For avoidance of

doubt, risk of loss and liability concerning the Goods shall pass to Buyer at Lenco's plant upon notification that the Goods are available.

6. Pricing.

- a. Lenco's prices reflect current economics at the time they are quoted. Prior to production of the Goods, prices are subject to change if raw material economics change, or if there's a significant change between the projected and actual program volumes.

7. Payment Terms.

- a. Payment is due thirty (30) calendar days from the date of Buyer's acceptance of the Goods, including deemed acceptance by Buyer as set forth above, unless otherwise specified on Lenco's quote or agreed by Lenco in writing. All payments shall be made in US dollars.
- b. Buyer shall pay Lenco's invoices in full, per the instructions on the invoice, regardless of when Buyer receives payment from its customer(s). All payments are due without offset, discount (unless explicitly provided for in these Terms and Conditions) or any reduction in the Purchase price, without deduction for any exchange or conversion, or for any taxes or duties levied by any governmental authority. This applies to all invoices including but not limited to invoices for Goods delivered, invoices for obsolescence claims and invoices for aged inventory.
- c. All prices are net of taxes, customs, duties, title and registration fees or other amounts, including freight and insurances, all of which shall be paid by Buyer. Buyer is solely responsible for all applicable updates for license stickers, safety and emissions inspection. Any claim for sales tax or duty exemption by Buyer must be provided to Lenco in writing prior to shipment, and shall be effective only after Lenco's receipt of all proper exemption forms. To the extent Lenco is required to pay any such tax, Lenco shall separately itemize such amounts on the invoice and Buyer shall pay such amounts as provided herein. Buyer shall not have any obligation to pay any tax which is not directly imposed on Buyer, including without limitation, income, franchise, property and gross receipts taxes imposed on Lenco's net income, net worth, property or revenue. Likewise, Lenco shall not have any obligations to pay any tax which is not directly imposed on Lenco, including without limitation, income, franchise, property and gross receipts taxes imposed on Buyer's net income, net worth, property or revenue. Unless otherwise agreed by the parties or required by any government or taxing authority, Lenco shall at all times be responsible for obtaining any relevant export/import licenses and regulatory approvals for the sale or importation of the Goods.
- d. Interest at the rate of one and one-half percent (1 ½%) per month, or the maximum interest rate allowable by law, whichever is less, will be charged to Buyer on all undisputed amounts remaining unpaid beyond the due date of the applicable invoice.
- e. If Lenco has reasonable grounds for insecurity with regards to amounts owed to Lenco by Buyer, Lenco may, at its own discretion, limit or cancel any credit terms previously given to Buyer. In addition, Lenco may, as a condition to Lenco's obligations under these Terms and Conditions, require Buyer to any of the following:

- i. Pay in cash an amount sufficient to cover the unpaid Purchase price; and/or
- ii. Open and confirm an irrevocable letter of credit in favor of Lenco for such unpaid Purchase price, and the terms of any such letter of credit shall comply with any specifications or requirements furnished by Lenco to Buyer.

8. Default.

- a. Buyer shall be in default and material breach of these Terms and Conditions upon the occurrence of any of the following:
 - i. Buyer's uncured breach of this or any other contract with Lenco;
 - ii. Buyer's breach of any of Buyer's representations or covenants set forth above;
 - iii. Buyer's failure to make timely payment on amounts owed by Buyer to Lenco; or
 - iv. Buyer's insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation.
- b. In the event of such default by Buyer, Lenco may, in addition to any other rights and remedies under applicable law, exercise any one or more of the following rights:
 - i. Cancel any part of these Terms and Conditions or any other contract with Buyer;
 - ii. Defer any shipment under this or any other contract;
 - iii. Immediately re-possess all or any part of the Goods in transit or in the custody or control of Buyer that have not been paid for in full by Buyer, at the sole risk and expense of Buyer;
 - iv. Finish all or any portion of its performance of these Terms and Conditions and charge Buyer up to the full Purchase price; and/or
 - v. Re-sell any or part of the Goods covered by this or any other contract, or any materials supplied pursuant to these Terms and Conditions, with Buyer being responsible for all losses and expenses incurred in such sale.
- c. Buyer acknowledges and agrees that Lenco would be irreparably damaged in the event the representations and covenants of Buyer set forth in these Terms and Conditions are not specifically enforced in the event of a breach hereof by Buyer and that such damage could not be adequately remedied by the payment of money damages. Consequently, in addition to any other remedies that may be available at law or at equity, Buyer agrees that upon any breach or threatened breach of these Terms and Conditions by Buyer, Lenco shall be entitled to temporary and permanent injunctive or other appropriate equitable relief to restrain or otherwise prevent such breach or threatened breach without posting any bond and without proving that monetary damages would be inadequate.

9. Engineering Change.
- a. Buyer shall notify Lenco in writing of any changes to drawings, specifications, sub-suppliers, or overall scope of supply, so that any commercial impact to the Goods, *i.e.*, cost, timing, and raw material, work-in-progress and finished inventory disposition can be properly assessed and communicated in writing by Lenco to Buyer.
 - b. No modification to Lenco's standard products shall be implemented without Lenco's prior written agreement. Buyer acknowledges and agrees that any such customization will affect pricing.
10. Aged Inventory Ordered by Buyer.
- a. Lenco reserves the right to invoice Buyer for any raw material, work-in-progress and finished inventory that is more than 60 days old and was ordered based on Buyer's orders. The terms of such invoice shall be the quoted terms.
 - b. Buyer's liability with regards to aged inventory shall be Buyer's highest quantity ordered. Unless otherwise specified by Lenco, Buyer's authorization shall be the higher of (i) Buyer's authorization and (ii) authorization required to cover Buyer's requirements over the quoted lead time.
 - c. If a minimum buy is quoted, Buyer's liability with regards to aged inventory shall be Buyer's highest quantity ordered plus the minimum buy.
 - d. Upon notification by Buyer of the end of a program, Lenco shall submit an obsolescence claim for all material ordered based on Buyer's orders but not shipped to Buyer within 30 days of such notification. Lenco will then submit an invoice reflecting the obsolescence claim. The terms on such invoice shall be the quoted terms.
11. Early Order Termination. Except in the case of a material breach by Lenco of these Terms and Conditions which remains uncured 45 days after written notice of such breach by Buyer to Lenco, Buyer shall not have the right to unilaterally terminate these Terms and Conditions or any order of Goods placed by Buyer to Lenco prior to its fulfillment. In the event Buyer effects such an unauthorized early termination, Buyer shall be liable to Lenco for all damages and expenses resulting from such early termination, up to the unpaid portion of the Purchase price plus Lenco's reasonable expenses resulting from such early termination.
12. Assignment. Buyer shall not assign or delegate any of its duties or obligations under these Terms and Conditions without the express agreement of Lenco, which may be withheld in Lenco's sole discretion. Any merger, reorganization, or sale of stock or other securities of Buyer that would result in a change in control of Buyer shall be deemed an assignment under these Terms and Conditions. Any such assignment shall not prohibit Lenco from enforcing its rights against Buyer or the assignee.
13. Insurance. Lenco shall only maintain such insurance as is required by governmental laws and insurance which Lenco, at its own discretion, deems necessary.
14. Force Majeure
- a. Force Majeure shall mean any event or condition not within the reasonable control of a party which prevents in whole or in material part the performance by such party of its obligations hereunder or which renders the performance of such obligations so

difficult or costly to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of State or governmental action, riots, disturbance, war, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion.

- b. Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due to owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, and its cause and possible consequences. The party claiming Force Majeure shall promptly notify the other party of the termination of such Force Majeure event. This provision shall not apply to the failure to make payments arising from Buyer's financial, business or operational condition.

15. Obligation to Deliver the Goods; Termination.

- a. Lenco shall not be obligated to deliver any of the Goods to Buyer upon any of the following occurrences:
- i. Buyer is in breach of any of these Terms and Conditions or any of its contracts with Lenco, including but not limited to non-payment of any amount owed to Lenco by Buyer;
 - ii. Lenco has reasonable grounds for insecurity with regards to amounts owed to Lenco by Buyer;
 - iii. Supplying the Goods would involve selling at a loss for Lenco, unless such sale has been expressly agreed to in writing;
 - iv. Supplying such Goods would be a violation of any international, Federal, state or local law or regulation;
 - v. A case of Force Majeure is preventing Lenco from delivering the Goods; or
 - vi. Upon termination of these Terms and Conditions by Lenco on 180 days prior written notice to Buyer.

16. Conflicting Buyer Information. In the case where Lenco receives conflicting orders and/or information from Buyer's authorized representatives, such orders and/or information that is most favorable to Lenco shall prevail. Lenco shall however use its reasonable best efforts to notify Buyer of such conflicts to the extent that Lenco is aware of them.

17. Arbitration; Jurisdiction.

- a. Any dispute or claim arising out of or relating to these Terms and Conditions shall be resolved by binding arbitration. Such arbitration shall be held in Boston, Massachusetts, USA, and shall be decided by a single arbitrator before an arbitration association or alternative dispute resolution organization mutually agreed to by Buyer and Lenco in good faith. Rules of such association or organization shall be modified as follows if necessary: (i) the total time from date of demand for arbitration to final award shall not exceed 60 days; (ii) the arbitrator shall be chosen by the arbitration association or dispute resolution organization without submittal of lists by the Parties and subject to challenge only for good cause shown; (iii) all

notices may be by telephone or other electronic communication with later confirmation in writing; (iv) the time, date and place of the hearing shall be set by the arbitrator in his or her sole discretion, provided that there be at least seven days prior notice of the hearing; (v) there shall be no discovery except by order of the arbitrator; and (vi) the arbitrator shall issue his or her award within seven days after the close of the hearing. The arbitrator shall render a decision and determine the claims of all parties and render any final award, which decision shall set forth in writing the reasons for the award, and judgment upon such decision and/or award may be entered by any court having jurisdiction over the parties. Each party hereby expressly waives its right to initiate legal proceedings or other legal remedies to resolve any dispute concerning this Agreement except to the extent it is required to enforce the arbitration award; provided, however, that either party may seek temporary injunctive relief in a court of competent jurisdiction before proceeding to arbitration. The fees and expenses of the arbitrator shall be paid by the substantially non-prevailing party unless the arbitrator decides otherwise in his or her discretion. The Parties shall each hold harmless and indemnify the arbitrator from any claims arising in connection with the arbitration.

- b. The arbitrators in any such dispute shall have no authority or power to modify or alter any express condition or provision hereof or to render an award which by its terms has the effect of altering or modifying any express condition or provision hereof. Nothing herein contained, however, shall be deemed to be a waiver of our lien on merchandise.
18. Amendment. These Terms and Conditions may be amended from time to time by Lenco in its sole discretion. No term or condition of these Terms and Conditions may be waived without the prior written consent of Lenco.
19. Choice of Law. The laws of the Commonwealth of Massachusetts, United States of America shall apply to any interpretation of the terms and conditions of these Terms and Conditions, without regard to its rules on conflicts of laws. Subject to the terms of Section 21a, Buyer hereby expressly consents to and waives any objection to (a) the personal jurisdiction and forum of the federal and state courts within the City of Boston, Commonwealth of Massachusetts, USA; and (b) service of process being affected upon it by registered mail sent to the address of Buyer's principal executive offices.