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## TERMS AND CONDITIONS OF USE OF WEBSITE

### **I. Terms of Use**

Please read these Terms and Conditions of Use of Website (“Terms and Conditions of Use”) carefully before using this website (“ID&C Website”). By using this site, you agree to the Terms and Conditions of Use contained herein and that you have the legal authority to accept these Terms and Conditions of Use. If you do not agree with the Terms and Conditions of Use, you should not use our site. Furthermore, we reserve the right to change the Terms and Conditions of Use at any time, without prior notice. If you are using the site after we post a change, you accept that change. You should check these Terms and Conditions of Use periodically.

- We have made every effort to present the content on the website accurately, but additions, modifications, and changes may occur. Content on this website is provided "as is"; neither ID&C (US) LLC (“ID&C”), a Delaware limited liability company, nor its representatives make any representation or warranty with respect to its content.
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### **IV. Disclaimers**

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#### **V. Limitation of Liability**

In no event shall ID&C or any of its affiliates, or the officers, directors, employees, members, or agents of each of them, be liable for any damages of any kind, including without limitation any special, incidental, indirect, or consequential damages, whether or not advised of the possibility of such damages, and on any theory of liability whatsoever, arising out of or in connection with the use of performance of ID&C Website.

#### **VI. Links to Third Party Websites**

ID&C does not review or control third party websites that link to or from our website, is not responsible for their content, and does not represent that their content is accurate or appropriate. ID&C makes no representations or warranties with respect to any linked site; use of any linked site is solely at your own risk.

#### **VII. Password and Account Security**

Every Buyer that has an account on ID&C Website is responsible for the following: (I) keeping his or her account password confidential and secured; (II) avoiding unauthorized access to such Buyer's computer; and (III) keeping the e-mail address associated with that account current (Buyer acknowledges that it is important to keep the e-mail address associated with his or her account current because although the Buyer may be able to log into his or her ID&C account using an old e-mail address, such Buyer will not receive messages from ID&C about his or her orders and inquiries or other matters).

Buyer accepts full responsibility for all activities that occur within such Buyer's ID&C account.





## TERMS AND CONDITIONS OF SALE OF GOODS

### **I. Definitions Section**

- a. “Between merchants” means in any transaction with respect to which both parties are chargeable with knowledge or skill of merchants.
- b. “Buyer” means a person who buys or contracts to buy goods from ID&C.
- c. “Contract” means the present or future sale of goods.
- d. “Contract for sale” means both a present sale of goods and a contract to sell goods at a future time.
- e. “Good Faith” means, in the case of a merchant, honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- f. “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (chapter 678) and things in action.
- g. “Order Confirmation” means a written confirmation of acceptance of Buyer’s Purchase Order sent by ID&C to Buyer which, or where Buyer confirms an order and pays for the Goods on the ID&C Website, <https://www.idcband.com/en-us/>, unless it is otherwise expressly set out, shall be deemed to incorporate all details of Goods, prices, delivery specification, and other terms which are contained in the relevant Quotation.
- h. “ID&C” means ID&C (US) LLC, a Delaware Limited Liability Company, its officers, directors, employees, members, or agents.
- i. “ID&C Website” means <https://www.idcband.com/en-us/>, including all proprietary pages, images, text, programs, and other material available throughout ID&C Website, or any other internet website addresses owned and operated, or any successive or related internet websites that are owned by ID&C hereinafter.
- j. “Parties” means ID&C and Buyer.
- k. “Purchase Order” means Buyer’s order for the supply of Goods received by ID&C setting out details of the Goods, with the Terms and Condition of Sale of Goods.



- l. “Merchant” means a person who deals in goods of the kind or otherwise by occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by occupation holds himself or herself out as having such knowledge or skill.
- m. “Quote or Quotation” means a formal written quote describing the specification of the Goods to be supplied by ID&C.

## **II. Orders**

Orders are not binding upon ID&C until accepted by ID&C.

## **III. Shortages**

All claims for shortages must be made by Buyer in writing within a period of forty eight (48) hours from receipt of the Goods. Unless such notice is given within the stated period of time, and in writing, Buyer agrees that it shall be conclusively presumed that Buyer has fully inspected the Goods and acknowledged that no shortage exists.

## **IV. Title/Risk of Loss**

Title to the Goods shall pass to Buyer upon delivery of the Goods to the common carrier (at ID&C’s dock) or any other location directed by Buyer. All risk of loss, damage, theft or destruction to the Goods shall be borne by Buyer at F.O.B. the place of shipment. No such loss, damage, theft or destruction to the Goods, in whole or in part, shall impair the obligation of Buyer under this agreement, all of which shall continue in full force and effect.

## **V. Security Interest**

Buyer agrees that ID&C shall retain a security interest in all Goods detailed herein and to all Goods now or hereafter acquired by Buyer, and to any proceeds thereof, until the purchase price and any other charges due to ID&C have been paid in its entirety. Buyer agrees to execute any financing statement or other documents that ID&C requests in order to protect ID&C’s security interest. Upon any default by Buyer of this agreement, ID&C shall have all rights and remedies of a secured party under the Uniform Commercial Code, which right and remedies shall be cumulative and not exclusive.

## **VI. Payment**

Unless otherwise agreed in writing by ID&C, all purchases must be paid in accordance with ID&C’s normal terms of sale, which is upfront payment in full. All past due amounts are subject to a 1.5% monthly finance charge or the maximum permissible under applicable law. All drafts





dishonored for any reason shall be assessed a \$25.00 service charge. In the event that Buyer stops payment on any draft issued to ID&C, for any reason, Buyer hereby recognizes that ID&C will suffer damage, the exact amount which cannot be determined with certainty and Buyer shall pay ID&C liquidated damages of \$100.00 for each such draft. In the event that Buyer utilizes a credit card to purchase Goods, Buyer agrees to not unnecessarily dispute such charges and further agrees to use best efforts to resolve any good faith dispute.

## **VII. Returns**

Please note that, if Buyer confirms a Purchase Order for personalized Goods, you do not have any right to cancel your contract to buy them and return them to us. Buyer has the right to reject any Goods which is faulty or not as described in our specifications.

If Buyer deems that any Goods are unsuitable, un-fit for purpose, or discovers that the Goods are damaged upon delivery; Buyer has the right to return the Goods and request a refund within fourteen (14) days.

## **VIII. Warranties**

The only warranties offered are those of the manufacturer, not ID&C. In purchasing the Goods, Buyer is relying on the manufacturer's specifications only and is not relying on any statements, specifications, or photographs representing the Goods that may be provided by ID&C. ID&C and its affiliates hereby expressly disclaim all warranties express and implied, related to Goods sold by third parties or affiliates of ID&C, including, without limitation, any warranty of merchantability or fitness for a particular purpose, or warranty of non-infringement. This disclaimer does not affect the terms of the manufacturer's warranty, if any.

**ID&C GOODS ARE PROVIDED TO BUYER "AS IS," "AS AVAILABLE," AND "WHEN AVAILABLE." ID&C, ITS AGENTS, AND ITS AFFILIATES DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. ID&C WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF USE OR DATE, OR OTHER SIMILAR LOSSES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES.**

## **IX. Events of Default**

Buyer shall be in default under this agreement upon the happening of any following events or conditions: (1) default by Buyer on payment of any installment, invoice, bill or any other indebtedness or obligation now or hereafter owed by Buyer to ID&C under this agreement; (2) default in the performance of any obligation, covenant or liability contained in this agreement or





any other agreement or document with ID&C; (3) any inaccuracy, warranty, representation or statement made or furnished by Buyer; and (4) dissolution, termination of existence, discontinuance of Buyer's business, insolvency, business failure, or appointment of receiver of any part of the property of, or assignment for the benefit of creditors by Buyer or the commencement of any proceedings under any bankruptcy reorganization or arrangement laws by or against Buyer or the attachment, levy, seizure or garnishment of any of Buyer's property, rights, assets (contingent or otherwise) or the Goods.

**X. Remedies of Seller**

**a. In General**

Upon the occurrence of any event of default or at any time thereafter, ID&C may, at its option and without further notice, exercise one or more of the following remedies as ID&C in its sole discretion shall elect: (1) demand or, without demand, sue for amounts due or thereafter accruing under any invoice, bill or other documentation evidencing indebtedness; (2) suspend deliveries to any and all Goods; (3) take possession of the Goods whenever found and for this purpose enter upon any premises of Buyer and remove the Goods, without court order or other process of law, without any liability for damages, suit, action or other proceeding by Buyer for such entry and/or removal; (4) cause Buyer, at Buyer's expense, to promptly return the Goods to ID&C, in like-new condition; (5) sell the Goods, or any part thereof at public or private sale (for cash or credit) at such time or times as ID&C shall determine, free and clear of any rights of Buyer, and if notice thereof is required by law, any notice in writing of any such sale by ID&C to Buyer not less than ten days prior to the date thereof shall constitute reasonable notice thereof of Buyer; and (6) exercise any rights accruing to ID&C under any applicable contract or law upon a default by Buyer.

**b. Mitigation of Damages**

Should ID&C repossess any of the Goods because of a default by Buyer, ID&C may make a commercially reasonable effort to sell the Goods at a reasonable price to a third party, provided, however, that ID&C shall have no obligation to actively seek out and solicit potential sellers and Buyers for said Goods.

**c. Collection Costs**

In the event of any default on the part of Buyer hereunder, Buyer shall pay any and all collection costs, including reasonable attorneys' fees incurred by ID&C.

**d. Rights and Remedies Not Exclusive**

No right or remedy conferred upon or reserved to ID&C by this agreement shall be exclusive of any right or remedy herein or by contract or law provided. All





rights or remedies conferred upon ID&C by this agreement and by law shall be cumulative and in addition to every other right or remedy available to ID&C.

**e. Time of the Essence**

Time is of the essence of this agreement.

**f. Indemnification**

Buyer agrees to and shall indemnify, defend and hold harmless ID&C, its employees and agents for and against all claims, lawsuits and losses from any third party using the Goods provided under this agreement. Any defense provided hereunder shall be by counsel of ID&C's choice.

**XI. Assignment**

This agreement and all rights, obligations and performances hereunder may not be assigned without prior written consent of ID&C.

**XII. Limitation of Liability**

In the event that a malfunction of the Goods leads to damage or injuries to the Goods, to Buyer's business, the end-user's business, to other equipment, or residence, to employees, or to other persons, ID&C shall not be liable for such damages or injuries. Buyer understands and agrees that if ID&C shall be found liable for loss or damage due from failure of ID&C to perform any of ID&C's obligations hereunder or the failure of the Goods in any respect whatsoever, ID&C's liability shall be limited to the greater of \$250.00 or the price of the Goods purchased by Buyer, and this liability shall be exclusive, and that the provisions of this sections shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to person or property, from performance or nonperformance of ID&C's obligations, breach of express or implied warranty, or from negligence, active or otherwise, from ID&C, its agents, servants assignees or employees. In no event shall ID&C be responsible for any other damages, including special or consequential damages.

**XIII. Prices**

The price for Goods offered by ID&C, including but not limited to price Quotations through ID&C Website, telephonically, by email, or any other source employed by ID&C, may increase or decrease from the time the Quotation is given by sales agents, displayed on ID&C Website, or any and all other price Quotations given, before an agreement has been entered into between ID&C and Buyer. On rare occasions, an item may be priced incorrectly on the ID&C Website. If the price Quoted to a Buyer is incorrect and is actually higher than the price provided at the time of purchase, then, at the sole discretion of ID&C, ID&C may either: (I) contact Buyer for instructions before shipping the Goods or charging Buyer for such Goods; (II) cancel the order







for such Goods and notify Buyer of such cancellation; or (III) ship the Goods at the incorrect price to the benefit of Buyer.

**XIV. Ages of Buyers**

ID&C's Goods are marketed for and directed towards purchase by adults or with the consent of adults. Individuals under the age of 18 ("Minors") are not permitted to place orders for ID&C Goods without the supervision of a parent or legal guardian.

**XV. Notices**

Buyer consents to receive electronic communications from ID&C. Buyer consents to receive notices from ID&C to the last known email address provided by Buyer and/or to the last known mailing address provided to ID&C. In the event that a purchase is made through the ID&C Website, Buyer consents to notices being posted on the ID&C Website. Buyer acknowledges and agrees that any communication via e-mail delivered by mail or by postings on ID&C Website satisfies any legal requirement that such communications be made in writing.

**XVI. Waiver**

The failure of ID&C to exercise or enforce any right or provision of these Terms and Conditions of Sale of Goods shall not operate as a waiver of such right or provision.

**XVII. Severability**

If any section, term, condition, or portion thereof shall be found to be illegal or void, for any reason, including as being against public policy, it shall be stricken and the remainder of this document shall stand as the original.

**XVIII. Applicable law; Jurisdiction**

This agreement shall be construed and enforced in accordance with the laws of the State of Florida. All claims, actions, disputes, controversies or suits shall be litigated exclusively in the courts of Florida. ID&C and Buyer submit to personal jurisdiction and venue of subject matter jurisdiction located in Sarasota County, Florida.

**XIX. Acknowledgement**

The Terms and Conditions of Sale of Goods, including all documents referenced herein, represent the entire understanding between Buyer and ID&C regarding Buyer's relationship with ID&C and supersede any prior statements or representations. No course of prior dealings or usage of trade shall be relevant to amend or interpret this agreement. Headings used in the Terms



and Conditions of Sale of Goods are for reference only and shall not affect the meaning of any terms. "Including" means "including, without limitation."

**XX. Modification**

This agreement may not be changed, modified or amended except by an instrument in writing signed by

ID&C and Buyer. ID&C reserves the right to make changes to the ID&C Terms and Conditions of Sale of Goods, ID&C Website, or other policies at any time without notice or liability. These terms were last revised January 6th, 2017.

