

Schedule "A"

STANDARD TERMS AND CONDITIONS OF SALE

1. Applicability

- 1.1. All goods and services supplied, provided or offered for sale by quotation or any other means (an "Offer") by Vitotherm USA LLC. ("hereafter called VITO") or are ordered from VITO (an "Order"), are provided and sold to you (the "Customer") subject to the terms and conditions stated herein, which shall form part of the agreement for such supply or provision of goods and services arising from such an Offer or Order.
- 1.2. VITO expressly limits all sales of goods and services to the terms and conditions contained herein. Any additional, different or inconsistent terms proposed by any other party, whether in writing or otherwise, are hereby objected to and rejected, and VITO shall not be bound by any such additional, different, or inconsistent terms, including any standard terms and conditions of sale of the Customer, unless VITO expressly agrees to such terms in writing signed by an authorized signing officer of VITO.
- 1.3. Acceptance of these express terms and conditions of sale occurs on the happening of any one or more of the following: (a) written acceptance of an Offer by Customer; (b) the Customer placing an Order with VITO; (c) failure by the Customer to object, within a reasonable period of time, following knowledge of VITO's commencement of performance on account of an Order from the Customer; or (d) the Customer's acceptance and receipt of goods or services from VITO and failure by the Customer to reject the goods or services at the time of delivery or in writing within ten (10) business days following delivery.

3. Intellectual Property

- 3.1. Unless specifically and explicitly agreed otherwise in writing between the Customer and VITO, VITO shall retain all proprietary rights in and to any intellectual property, offers, advice, designs, illustrations, drawings, test models, software, and other Data pertaining to the goods and services provided and supplied by VITO. This section shall survive the completion, cancellation or termination of any Offer, Order or sale of any goods or services by VITO.
- 3.2. The sales of goods and services by VITO do not convey to the Customer any ownership, license or rights VITO may have to or in the goods, services, processes, operations, or sales literature it provides to Customers.
- 3.3. All information and Data provided to the Customer by VITO in connection to the sale of goods and services to the Customer shall be deemed to be given and received in strict confidence, unless and only to the extent that it is covered by a separate written agreement.
- 3.4. The Customer hereby agrees, upon written request made by VITO, to return and deliver to VITO within the time period set out by VITO in the written notice for the return and delivery, any and all Data supplied by VITO to the Customer in connection with the sale of goods and services that was not included in the Offer or Order, or was otherwise provided by VITO solely for the purposes of assisting VITO in carrying out its obligations under any Offer or Order and was never intended to be retained by the Customer upon completion, cancellation or termination of the sale of goods and services. For greater certainty the Customer has no right to retain any information or Data that does not relate directly to an Offer or Order.
- 3.5. The customer acknowledges that any breach or threatened breach of any provision of this Article 3 will result in VITO suffering irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, in the event of any breach or threatened breach of any provision of this Article 3, the Customer agrees that VITO will be entitled to interim and permanent injunctive relief, specific performance and other equitable remedies, in addition to any other remedies to which VITO may become entitled.

2. Offers by VITO

- 2.1. All Offers made by VITO with regard to the sale of goods and/or services are made without engagement and shall be in writing. No amendment to any Offers made by VITO shall be binding upon VITO unless made in writing and signed by an authorized officer of VITO. The Customer acknowledges that VITO has not authorized any of its sales agents or representatives to make any representations, warranties or agreements on behalf of, or to bind VITO in any way.
- 2.2. In the event the Customer provides specifications, designs, illustrations, drawings, models, software and other data ("Data") pertaining to the goods and services of VITO, the goods and services to be provided by VITO will be based on such Data, regardless of any error, inaccuracies or incompleteness of the Customer's Data. VITO shall assume no liability for any delays, damages or losses resulting from the Customer's Data being in any way incomplete, inaccurate, inapplicable or flawed, including where VITO knew or ought to have known of same.
- 2.3. If an Offer to supply goods and services is made to a Customer by VITO, such Offer will be deemed accepted by the Customer if: (a) VITO receives written notice from the Customer of the Customer's acceptance; or (b) the Customer fails to reject VITO Offer within fourteen (14) business days from the date the Offer is made and VITO reasonably believes the Offer was accepted.

4. Delivery

- 4.1. Unless otherwise agreed to in writing, the Customer shall be responsible for all transportation charges, including without limitation, all costs and charges for or relating to delivery, shipment, freight, transportation, handling, storage, insurance, and related items with regard thereto.
- 4.2. Unless otherwise agreed to in writing, products shall be shipped in standard commercial packaging. When special or export packaging is requested or, in the opinion of VITO, required under the circumstances, the cost of the same, if not set forth on the invoice, will be separately invoiced to the Customer.
- 4.3. Delivery and performance dates quoted to the Customer or otherwise communicated to the Customer are only approximate estimates by VITO and are based on conditions at the time of acceptance of an Offer or delivery of an Order by the Customer.
- 4.4. The Customer agrees that delivery and performance dates may change if any change or modification is made to an Offer or Order after the Customer is quoted a delivery date
- 4.5. The delivery of goods and services by VITO is subject to:
 - 4.5.1. the receipt of all Data required to be supplied by the Customer to VITO;
 - 4.5.2. prompt written receipt by VITO from Customer of confirming copy of the Order;
 - 4.5.3. the actual receipt by VITO of payment in full of any amounts that are required to be paid by the Customer prior to any delivery date; and
 - 4.5.4. the fulfilment of all conditions applicable to the Customer that are necessary for delivery. The failure of the Customer to discharge any of the obligations in this section may result in a delay in delivery and an increase in the purchase price or non-delivery or performance by VITO.
- 4.6. The Customer shall physically inspect and examine the delivered goods and/or services at time of receipt. In the event the Customer is of the opinion that the goods or services do not comply with the terms of the Offer made by VITO or the Order accepted by VITO, Customer shall immediately notify VITO in writing of any such alleged non-compliance. If VITO has not received actual written notice of any alleged non-compliance within ten (10) days after delivery, then the delivery shall be conclusively presumed to fully satisfy the terms and

specifications therefor.

4.7. VITO will make commercially reasonable efforts to meet any delivery date(s) quoted to the Customer, however, if a delivery date is not met by VITO shall not, under any circumstances, be liable to the Customer for compensation, unless this compensation has been agreed to in writing by VITO. Without limiting the generality of the foregoing, under no circumstance shall VITO be liable to Customer for any reasonable delay in shipment or failure to meet any quoted delivery date(s) or for any reasonable delay in performance thereunder, or any delay permitted under Sections 4.8 and 4.9.

4.8. If VITO suffers a delay in delivery or performance by any of its suppliers or contractors, the time for delivery or performance shall be extended for such period of time as is equal to the period of the delay expressed by VITO will give the Customer notice within a reasonable time after VITO becomes aware of such delay or anticipated delay.

4.9. VITO shall have the right to indefinitely postpone or suspend the time for delivery and performance due to unforeseen circumstances or due to any cause beyond its control, including without limitation, acts of God, wars, riots, embargos, acts of civil or military authorities, fires, floods, accidents, strikes, pandemics, epidemics, transportation delays or shortages, inability to obtain material or supplies, excessive demand for goods and services over available supply, interruption for any reason in the manufacture of goods, customs delays, or other causes not within VITO control.

4.10. VITO reserves the right to change the part number, design, dimensions, weight or specifications of the goods or materials specified in the Offer or Order, provided any such change or modification to the goods or materials are of similar or better quality or fitness.

5. Transmission of Risk

5.1. For any sale of goods, title and risk of loss or damage in the goods shall pass to the Customer when VITO makes them available to the Customer. This includes, without limitation, any risk of loss or damage as result of storage, loading, carriage, and unloading of the goods after the goods have been made available to the Customer.

5.2. Goods are deemed to have been made available to a Customer at the earliest occurrence of: (a) the date set out in the Offer or Order or written notice provided to the Customer indicating when the goods are available and where the Customer may pick them up; (b) the time possession of the goods are transferred to the Customer directly at VITO place of business, or at another place agreed to by VITO and the Customer as the place of delivery, if delivery is not made by a common carrier; or (c) the time possession of the goods are transferred to a common carrier, FOB VITO facility, as the case may be, regardless of whether VITO will install or supervise the installation of the goods.

5.3. Where a common carrier is used for delivery of goods, the Customer and VITO hereby agree that in the absence of specific written shipping instructions from the Customer, the carrier shall be selected by VITO and will be the method VITO deems most reasonable given the circumstances. Claims for damage in transit shall be processed solely by the Customer directly with the carrier and VITO shall have no liability to the Customer with respect to any act or omission of the carrier.

5.4. Goods held or stored by VITO in the capacity of a gratuitous bailee for the Customer after they have been made available to the Customer shall be at the sole risk of the Customer, and the Customer shall be liable for the expense to VITO of holding or storing the goods. Should the Customer wish to insure the goods stored or held by VITO, they shall do so at their own expense and on their own volition.

5.5. If the purchase of goods from VITO involves a trade-in and the Customer continues to use or hold possession of the goods to be traded in pending delivery of the purchased goods from VITO, the risk of loss or damage in relation to the goods to be traded in shall continue to be borne by the Customer until the moment at which possession of the goods to be traded in are transferred to VITO.

5.6. The Customer shall be liable for any loss, theft or damage occasioned to the property of VITO that is located at the Customer's place of business, or at the location where the goods and services are to be provided, save and except the VITO place of business. The Customer agrees to insure said property of VITO that is located at the Customer's place of business, or at the location where the goods and services are to be provided and to direct the Insurer to pay VITO directly for any losses occasioned to the property of VITO.

6. Changes to Goods of Services

6.1. Accepted Offers or Orders accepted by VITO are not subject to change, modification, variation or cancellation by the Customer after acceptance, except with VITO's written consent and upon payment of any reasonable charges to cover the cost or loss incurred by VITO as a result of the change, modification, variation or cancellation, including, without limitation, charges incurred for labor or material costs, overhead, or commitments made by VITO.

6.2. Any change, modification, variation or alteration to the goods and services as a result of: (a) alteration in the Customer's design or specifications or other Data; (b) inaccurate information and Data provided by the Customer; or (c) inaccurate estimate in quantity, shall result in a change to the quoted price of such goods and services.

7. Performance

7.1. The Customer shall ensure and use its best efforts to ensure that: (a) VITO can carry out its obligations under the Offer without unreasonable interference or interruption; (b) the Customer and VITO can carry out their respective obligations at the agreed time; and (c) VITO will have access to all necessary and appropriate facilities, including, without limitation, access to gas, water, electricity, heating and a lockable and dry storage room.

7.2. The Customer shall ensure that the facilities at which VITO will be required to provide goods or services, comply with all work, health and safety laws, regulations and guidelines.

7.3. The Customer shall ensure that all statutorily required licenses, permits, exemptions and other decisions or authorizations that are necessary in order for VITO to carry out its obligations are obtained and obtained on a time is of the essence basis.

7.4. The Customer shall be liable to VITO for any costs, losses or consequential damages incurred or sustained by VITO as a result of the Customer failing to fulfill its obligations under the Offer or Order

7.5. The completion of the delivery of goods and services by VITO will be deemed to occur on the earliest occurrence of : (a) the Customer providing written acceptance of the goods and services to VITO; (b) the Customer uses or otherwise benefits from the goods or services provided by VITO, and, if the Customer uses only part of the goods and services, such part shall be deemed to have been completed; (c) the Customer does not indicate in writing, within fourteen (14) days of receipt of the goods and services, whether or not the goods and services have been approved; (d) VITO giving notice to the Customer that the work has been completed and the Customer does not indicate in writing, within fourteen (14) days of receipt of the notice, whether or not the goods and services have been approved; or (e) the Customer does not approve the goods and services on account of minor defects or missing parts which can be repaired or supplied within thirty (30) days and which do not prevent the use of the goods and services.

7.6. If the Customer does not accept the goods or services provided by VITO, the Customer shall provide written notice to VITO within fourteen (14) days of receipt of the goods and services from VITO, indicating its non-acceptance and setting out in detail the reason for the non-acceptance. If the reason for non-acceptance can be remedied by VITO, the Customer must provide VITO with the opportunity to remedy the non-acceptance and make the goods and services available to the Customer for acceptance again.

7.7. VITO shall be entitled to suspend or terminate performance and delivery of any goods and services if performance is permanently impossible and beyond either of the parties' reasonable control, or if a temporary event making performance impossible beyond the parties' reasonable control has lasted for longer than eight (8) weeks from the quoted delivery date. Upon such suspension or termination by VITO, the Offer or Order shall be terminated in respect of such part(s) of the obligations which have not yet been performed, and the parties shall not be entitled to compensation for damages or losses suffered or yet to be suffered as a result of the termination. In this event, VITO shall be entitled to payment for any goods or services supplied or rendered on a quantum meruit basis.

7.8. Any inspection by the Customer of goods used or supplied by VITO must be stipulated in writing prior to any Offer and any Order and is subject to reasonable charges and safety and security conditions. The Customer shall have no right of access to VITO facilities except as specifically authorized in advance by VITO. The Customer shall indemnify and save VITO

harmless from any and all suits, damages and expenses of the Customer or its agents resulting from personal injury, including death, or loss or damage of property occurring during or in connection with any such inspection.

- 7.9. Customer shall indemnify and hold VITO harmless against all loss, including, but not limited to, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury or death arising from any goods, services, equipment, parts, hardware, software or programming supplied by or on behalf of the Customer. For greater certainty and without limiting the generality of the foregoing, the Customer shall hold VITO harmless against any expense or loss resulting from infringement of patents, trademarks or any and all other intellectual property rights arising from compliance with any designs, specifications, instructions or materials supplied by or on behalf of Customer. The Customer shall not be required to indemnify VITO against VITO's intentional tortious acts but shall be required to indemnify VITO against any court costs and reasonable legal and professional fees and disbursements until it has been established that the loss in questions was caused solely by intentional tortious acts of VITO.

8. Limitation of Liability

- 8.1. The maximum liability of VITO to the Customer as a result of the breach of, or arising out of any Offer or Order or other agreement for the sale of goods and services, shall be limited in totality and in amount to the greater of the net purchase price of the goods or services being sold to the Customer by VITO thereunder or to the sum of Ten (\$10.00) Dollars in funds of United States.
- 8.2. In no event shall VITO be liable for any special, consequential, incidental, economic, direct, indirect or other damages, including, without limitation, loss of profit, loss of business, loss of opportunity, whether or not VITO has been advised of the possibility of such loss, however caused, including, without limitation, as a result of any breach or repudiation of any Offer, Order, agreement or contract, breach of warranty, breach of contract, acts of negligence, or otherwise.
- 8.3. The Customer shall indemnify and save VITO harmless against all claims and liability which may arise out of any third party claims against VITO as a result of a defect in a product that is supplied to or a service provided to a third party by the Customer that consists wholly or partly in products or services provided by VITO. The Customer agrees and acknowledges that VITO has not made any representations to the Customer with respect to the intended purpose and use of the goods and/or services supplied by VITO and the Customer has satisfied itself in this regard.
- 8.4. The limitations of liability contained in this Article 8 form an essential part of the bargain between VITO and the Customer.

9. Warranty

- 9.1. VITO warrants that, as of the date of delivery of all goods and/or completion of services provided by VITO, the goods and services shall be free from defects in material and workmanship under normal use and service when correctly stored, installed, used and maintained by the Customer and such warranty will extend for a period of one (1) year from the date of delivery or completion.
- 9.2. With respect to services provided by VITO to the Customer for maintenance purposes, VITO warrants such services shall be free from defects in workmanship for a period of three (3) months from the date of completion of the maintenance services.
- 9.3. With respect to services provided by VITO to the contractor under a construction project, VITO warrants that the construction will be free from defects in material and workmanship for a period of one (1) year from the date of completion of the construction provided VITO was provided with a reasonable opportunity to select the materials and services provided.
- 9.4. In the event of a warranty claim with respect to the construction or materials used, VITO shall repair or replace the materials, provided: (a) the parts or material which VITO is to repair or replace are sent to VITO free of charge; and (b) any expenses relating to the dismantling and assembly of these parts or traveling and accommodation incurred by VITO are paid by the Customer, unless otherwise agreed in writing.
- 9.5. With respect to refurbished goods provided by VITO to the Customer, VITO warrants that such refurbished goods shall

be free from defect in material and workmanship for a period of ninety (90) days from the date the goods are delivered to the Customer.

- 9.6. With respect to any goods or materials supplied by VITO that have a factory warranty, VITO shall advise the Customer of such factory warranty and the factory warranty shall supersede the warranty contained in this Article 9. The existence of a factory warranty shall not, in any circumstances, have the effect of extending the warranty periods set out in this Article 9 regardless of whether or not VITO notified the Customer of such factory warranty.
- 9.7. No warranty extended by VITO shall apply to: (a) any goods which have been modified or altered by persons other than VITO; (b) any goods subjected to any misuse, neglect, non-maintenance, defective maintenance, improper storage or handling, or accidental damage; (c) defects in any goods and services that are a result of normal wear and tear; (d) any goods manufactured, assembled, installed, maintained or repaired by a person other than VITO; (e) any defects that wholly or partially arise or are facilitated by any error in or inaccuracy or incompleteness of the Customer's Data; (f) any used, old or refurbished goods that are not considered new at the moment of delivery; or (g) any defects known to the Customer or which the Customer ought to have known at the time of delivery or completion and failed to assert a warranty claim with fourteen (14) days of delivery or completion.
- 9.8. VITO exclusive obligation under the warranties set out in this Article 9 is, at VITO's sole discretion: (a) to repair the defective goods and services; (b) to supply replacement goods or services free of charge or at a reduced price; (c) to refund to the Customer the purchase price paid for the defective goods or services or a part thereof; or (d) to grant credit for the value of the goods or services found to be defective under this warranty. VITO is not required or obligated to reimburse or make any allowance to the Customer for any labor charges incurred by the Customer for replacement or repair of any goods unless such charges are authorized in advance in writing signed by an authorized officer of VITO.
- 9.9. To assert a warranty claim under this Article 9: (a) the Customer must provide VITO with written notice of any defect, within ten (10) days after discovering the defect and within the applicable warranty period, indicating with reasonable detail the reason and nature of the warranty claim; (b) the Customer shall give VITO reasonable access to the goods and the relevant records and data; and (c) VITO inspection must reveal that the Customer's claim is valid under the terms of this warranty. Claims made after the warranty periods as set out above are not covered by this or any other warranty offered by VITO. Failure by the Customer to avail itself of the warranty provided by complying with the provisions for making a claim herein shall release VITO from any liability relating to warranty claims by the Customer.
- 9.10. THE WARRANTIES SET OUT IN THIS ARTICLE 9 ARE SUBJECT TO LIMITATIONS AS SET FORTH HEREIN. VITO MAKES NO WARRANTY OTHER THAN THE WARRANTIES SET FORTH HEREIN. THE WARRANTY IS EXCLUSIVE AND CONSTITUTES VITO'S SOLE LIABILITY AND THE CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY CLAIM HEREUNDER AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHER IMPLIED WARRANTY OF QUALITY, ALL OF WHICH VITO HEREBY DISCLAIMS.

10. Payment

- 10.1. Any and all prices quoted by VITO are subject to adjustment on account of specifications, quantities, delivery, shipment, exportation, or other terms and conditions that are not part of the original price quotation or Offer or accepted Order.
- 10.2. All prices and charges quoted are in United States currency unless otherwise specified.
- 10.3. All prices quoted for the sale of goods and services are based on delivery ex works and are exclusive of all taxes, duties, fees, shipping and handling costs, tariffs, customs and other costs, unless expressly set out in the written quote, and any and all prices quoted may be subject to increase by the amount of any and all such taxes, duties, fees, shipping and handling costs, tariffs, customs and other costs which VITO may be required to pay or collect upon the delivery of the goods and services and/or the completion of the sale. If the Customer is exempt from payment of any taxes, duties, fees or costs they must provide VITO with sufficient evidence of

same before the sale or delivery of goods or services.

- 10.4. VITO specifically states that any and all quoted prices, unless set out in writing otherwise, do not include: (a) the costs of groundwork, pile-driving, cutting, breaking, foundation work, bricklaying, woodwork, plastering, painting, wallpapering, repairs or other construction work not specifically set out in the Offer or Order; (b) the costs associated with the usage of gas, water, or electricity, their connections and other infrastructure facilities that are not specifically set out in the Offer or Order; (c) the costs of preventing or mitigating damage to goods present at or near the job site; (d) the costs of removing or disposing of materials or refuse which is not specifically set out in the Offer or Order; or (e) traveling and accommodation expenses.
- 10.5. All payments shall be made at the place of business of VITO or by remittance to an account designated by VITO.
- 10.6. Unless otherwise agreed in writing, all sales of goods and services that are completed at VITO place of business, shall be paid forthwith in cash or certified cheque delivered to VITO. All other sales made in the United States shall be payable within thirty (30) days of the date of the invoice.
- 10.7. Unless otherwise agreed in writing, payment on export orders outside of the United States shall be made by irrevocable confirmed letter of credit payable in United States dollars against VITO invoice and standard shipping documents. Such letter of credit shall be in amount equal to the full purchase price of the goods and services and shall be established in a bank acceptable to VITO.
- 10.8. The full balance owing by the Customer to VITO in connection with each sale of goods or services to the Customer will become fully due and payable prior to the payment date stipulated in the Offer or Order, if any of the following events of default occur: (a) failure to pay the full amount of any instalment payment when same becomes due and payable; (b) the Customer becomes bankrupt or insolvent or compounds its debts with its creditors or a receiver has been appointed for the Customer; (c) the property or accounts receivable of the Customer are seized; (d) the Customer commences any winding-up or dissolution or liquidation proceedings; or (e) the Customer dies or becomes incapacitated.
- 10.9. Any and all overdue balances owing to VITO by the Customer will be subject to interest at a rate of 1.5% per month (18% per annum), to the extent permitted by law, and all partial payments received from the Customer shall be firstly applied to any accrued interest, and secondly applied to the principal balance owing.
- 10.10. The Customer will be responsible for and indemnify VITO for all costs, legal fees, and other expenses incurred by VITO in relation to collecting payment from the Customer of any overdue balance.
- 10.11. Unless otherwise agreed in writing, if deliveries are made in instalments, each instalment shall be separately invoiced and paid for when due without regard to other deliveries.
- 10.12. Any amounts owed by the Customer shall be paid without set-off for any amounts which the Customer may claim are owed by VITO, regardless of any controversies, disputes or claims that may exist.
- 10.13. VITO hereby reserves, and the Customer hereby grants to VITO a purchase money security interest (PMSI) in and to any and all products sold to the Customer and the proceeds thereof, in the amount of its purchase price and any applicable interest. Upon the request of VITO, Customer shall execute and deliver any Article Nine of the Uniform Commercial Code and/or applicable Michigan and United States' laws, or other instruments, whether under the laws of the State of Michigan or the United States and perform all acts which may be desirable for the perfection and continuation of VITO's security interest hereby reserved and granted. In the event of default by the Customer of any of its obligations to VITO shall have the right, in addition to any other rights and remedies available to VITO, to repossess the goods sold hereunder and without liability to the Customer. In such event, the Customer agrees to make the goods available to VITO so that VITO can repossess them without a breach of peace. Customer shall pay all costs and expenses incurred by VITO in retaking, holding, preparing for sale, and selling the goods, including legal fees, disbursements and court costs on a full indemnity basis.
- 10.14. The Customer hereby agrees not to mortgage, charge or otherwise encumber the goods sold by VITO until VITO has received full payment of the balance owing for the goods.
- 10.15. The Customer understands and acknowledges that VITO may not have an adequate remedy at law for the breach or

threatened breach of these terms and VITO may in addition to any other remedies which may be available hereunder, file a suit in equity to specifically enforce the terms and provisions hereof by obtaining the issuance of an ex-parte restraining order to enjoin and prohibit the Customer from transferring and/or altering, destroying or impairing the goods. Additionally, VITO may obtain whatever other and additional equitable relief as is appropriate to compel the Customer to permit VITO to physically reclaim, repossess and retake the Goods.

11. Export

- 11.1. The goods or services provided by VITO may be subject export and import controls and regulations of the United States of America, the country of manufacture, or the country of shipment, and, as such, acceptance of an Offer or Order and delivery of goods and services is conditional upon the compliance with applicable export or import controls. VITO will have no obligation to sell or deliver any goods or services until all required export or import controls and requirements are complied with.
- 11.2. No goods sold by VITO may be exported or re-exported unless such export or re-export complies fully with all applicable export controls and lien restrictions.

12. General

- 12.1. The failure of VITO to enforce at any time any of the provisions of these terms and conditions, or to exercise any right, election or option provided herein, shall not be a waiver, and shall in no way be construed as a waiver, of such rights, election or option, nor shall failure in any way be construed to affect the validity of these terms and conditions or any part thereof, or the right of VITO thereafter to enforce each and every such provision.
- 12.2. The headings contained herein are for convenience of reference only and shall in no way define or limit the provisions thereof.
- 12.3. If any term or condition of these terms and conditions is held void or unenforceable, it shall be severed, and every other provision shall be enforced as if the void or unenforceable term or condition had never been a part thereof.
- 12.4. In the event of a conflict between these terms and conditions and the provisions in any Offer or accepted Order, the provisions of these terms and conditions shall govern unless a contrary intention is evident.
- 12.5. It is agreed and understood that unless the context of these terms and conditions requires otherwise, words importing the singular number shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.
- 12.6. The Offer or accepted Order as the case may be together with these terms and conditions shall inure to the benefit of and shall be binding on and enforceable by and against the parties and their respective heirs, executors, administrators, successors and permitted assigns. Neither party may assign any of its rights or obligations hereunder without the written consent of the other party.
- 12.7. Customer waiver any defense based upon any legal disability of Customer or any guarantor, or any discharge or limitation of the liability of Customer or any guarantors or any other guarantor, whether such disability, discharge, limitation, restraint or stay is consensual, or by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor-relief proceeding, or from any other cause.
- 12.8. The Customer represents and warrants: (a) that it has read and understood these terms and conditions and (b) that these terms and conditions are fair and reasonable to the Customer.



13. Choice of Law and Exclusive Jurisdiction Forum for Disputes

- 13.1. The Customer and VITO agree that the law of the State of Michigan shall apply to the Offer or Order together and these terms and conditions in bringing or defending any civil action or proceeding. The parties, or its successor entity, hereby specifically agree to bring or defend, exclusively, any civil action or proceeding in the appropriate court of subject matter jurisdiction sitting in Kent County, Michigan at, even if Kent County, Michigan's not the location of residence of the Customer. The Customer hereby

acknowledges and understands that VITO would have not entered into any agreement or provided an Offer or accepted an Order for goods or services as requested by the Customer without the Customer's agreement to have the appropriate Court of subject matter jurisdiction sitting in Kent County, Michigan determine any civil action or dispute which may arise between VITO and the Customer. The parties hereby agree to abide by this clause in any civil dispute between them and agree to not bring any motion or request to have any civil proceeding transferred to another jurisdiction in the face of this exclusive jurisdiction and forum clause.