

## tesa Terms and Conditions of Sale

### I. GENERAL

**1. Integral Part.** These tesa Terms and Conditions of Sale (the “Terms”) form an integral part of and apply to any and all quotations, acknowledgements, shipping documents, and invoices of tesa (defined below) to Buyer (defined below), any and all tesa Credit Applications, any and all agreements concluded between the Parties which incorporate by reference or annexes these Terms therein, any and all purchase orders, revisions, order releases, and/or other documents related to any of the foregoing received by tesa from Buyer, any and all Goods and/or Services provided by tesa, and any and all transactions initiated or otherwise occurring in whole or in part via the tesa PRO online portal or EDI, all as and to the extent accepted by tesa (collectively, any and all of the foregoing, with the Terms, is referred to herein as the “Order”).

tesa’s quotations are expressly made conditional on Buyer’s assent to these Terms, which represent the sole and exclusive terms and conditions upon which tesa offers to sell any Goods or Services to Buyer. tesa hereby objects to and rejects any and all proposals or additional or different terms or attempts by Buyer to vary in any degree any of these Terms. Each Order also includes any amendment made from time to time by the Parties, provided such amendment is in a writing signed by an Authorized Representative of tesa making express reference to amending these Terms. These Terms of the Order are exclusive.

These Terms shall not be amended, modified, supplemented, limited, or rescinded, and no amendment, modification, supplement, limitation, or rescission of the Terms will be binding on tesa unless and to the extent agreed to in a writing signed by an Authorized Representative of tesa making express reference to amending these Terms.

**2. Order of Precedence.** Unless otherwise agreed by the Parties in accordance with Section 1 above, the provisions of these Terms shall take precedence over any contrary provision contained in any Order. If Buyer issues a purchase order or other form relating to an Order, Buyer agrees that such form is issued for purposes of Buyer’s authorization and Buyer’s internal use only and shall not in any way revise or modify these Terms. The issuance of an invoice or other confirmation of an Order by tesa shall not constitute an acceptance of any printed provisions that are inconsistent with, or otherwise amend, modify, supplement, or rescind these Terms, unless such changes are otherwise agreed by the Parties in accordance with Section 1 above.

### **3. Interpretation**

**3.1. Definitions.** Throughout these Terms, the words and expressions below shall have the meanings assigned to them, except where the context requires otherwise:

“Affiliate” means any company owned in whole or in part by tesa tape, inc.;

“Authorized Representatives of tesa” means the President, Head of Finance, Head of Operations, or Head of Sales of tesa;

“Buyer” means a customer to whom tesa provides any Goods or Services, including without limitation any legal entity identified in the Order, or which places an Order through tesa PRO or EDI;

“Carrier” means, as applicable, the legal entity commissioned by tesa or Buyer to transport the Goods;

“Confidential Information” means the Order and any and all information concerning the business, affairs, products, research, and technologies of tesa or any of its Affiliates, except for information that at the time of disclosure is without any confidentiality restrictions under applicable law and that has been made publicly available without breach of any confidentiality obligations to tesa or its Affiliates. Confidential Information also includes any materials, notes, or information that contain or are based on any other Confidential Information, whether prepared by tesa, Buyer, or agents or any other person, and any third-party information or materials that tesa is required to keep confidential;

“Day” means any calendar day;

“Drop Shipment” means an Order facilitated by Buyer, but for the benefit of, and to be shipped to, a third-party;

“EDI” means electronic data interchange or similar system used by either Party;

“Excluded Claims” is as defined in Section 23.3.1;

“Force Majeure” means any event or occurrence that is beyond the reasonable control of tesa, outside the reasonable foreseeability of tesa, or which renders substantially more burdensome tesa’s production, delivery, or performance. Any of the foregoing includes, without limitation, strikes, lockouts, fires and accidents, acts of God, embargos, seizures, war, riots, a shortage of or an inability to obtain material, supplies, fuel, labor, or shipping facilities, or on account of any acts, demands, orders, or regulations of municipal, state, or federal government and any department or agency thereof, inclusive of declarations of pandemics (including without limitation future variants of COVID-19), whether or not legally binding on tesa, or any other contingency or event at tesa’s facilities or any of its supplier’s facilities or elsewhere;

“Good” or “Goods” means the tesa product(s) listed in the Order or purchased through tesa PRO or EDI;

“Minimum Order Quantity” or “MOQ” means, for any tesa product, the lowest number of units required for acceptance of an Order, an exception to which can result in a higher per-item shipping charge;

“Order” is as defined in Section 1;

“Party” means tesa or Buyer, and “Parties” means tesa and Buyer;

“Proper Storage Conditions” means: (a) a temperature range of 68-72 degrees Fahrenheit (20-22 degrees Celsius); (b) relative humidity of not more than 50%; (c) limited exposure to direct ultraviolet (UV) light sources; and (d) if applicable, flat storage;

“Services” means, if applicable, any ancillary or other service provided by tesa to Buyer in relation to the Goods, as specified in the Order;

“Specialty Item” or “Made-to-Order Item” means a Good that tesa has manufactured according to the customized specifications of Buyer or at Buyer’s request;

“Terms” is as defined in Section 1;

“Third-Party Claim” is as defined in Section 23.1.

“tesa” means tesa tape inc. or such other Affiliate as indicated in the Order; and

“Work Day” means any day, Monday through Friday, excluding days that are declared as federal or banking holidays in the USA.

**3.2. Interpretation.** As used throughout these Terms, except where the context requires otherwise, the singular also shall mean the plural, and vice versa. Sections and headers are provided for convenience only, and shall not affect the interpretation of the Terms. Any interpretation of the Terms shall be construed consistently by and against both Parties, and shall not be construed against the draftsperson. Buyer and tesa acknowledge that they are merchants in respect to the Goods and Services, they have had an opportunity to review the Order, and the provisions of the Order are reasonable when considered as a whole.

## **II. PRICES; ORDERS; CANCELLATION; DELIVERY; TITLE AND RISK OF LOSS**

### **4. Orders**

**4.1. Required information.** Each Order shall contain the following information: (a) the identity of the Buyer; (b) an itemization of the Goods; (c) the quantity(ies) of Goods; (d) the requested shipment date; and (e) prices. tesa shall have no liability due to incomplete or inaccurate information provided by Buyer, including in regard to resulting delays with shipment of Goods, and tesa may add to the price, and Buyer agrees to pay any such additions to the price made necessary by incomplete or inaccurate information supplied by Buyer.

**4.2. Acceptance by tesa.** All Orders are subject to credit approval and acceptance by tesa, which acceptance or rejection will be by tesa in its sole discretion, as well as, if applicable, Buyer’s account being current (i.e. past Orders have been timely paid). tesa will not accept “hold for release” Orders. tesa also expressly reserves the right to reject any and all Orders from distributors that do not meet the requirements of the tesa distributor program.

**4.3. Full cases only.** All Orders must be placed for full cases only; split cartons only will be accepted by tesa on an exceptional basis, in its sole discretion. Subject to the further rights and restrictions

set forth in Section 6.3, a split Order that is partially canceled by Buyer may incur higher per-item shipping costs in accordance with these Terms.

**4.4. Drop Shipments.** Acceptance of Orders for Drop Shipments shall be at the sole discretion of tesa. tesa reserves the right to assess a surcharge for any Drop Shipment.

**4.5. Minimum Order Quantity.** Unless otherwise agreed in writing by tesa, each Order shall conform to any MOQ declared by tesa.

**5. No Inventory; Forecasts.** Unless otherwise agreed in writing by tesa, tesa shall be under no obligation to maintain either any minimum volume of inventory or a safety stock in anticipation of a potential Order(s). In the event that tesa agrees to maintain an inventory or safety stock of Goods, Buyer shall purchase such inventory or safety stock upon (i) cessation by Buyer of Orders, by notice of failure to order any of such Goods, for the prior three (3) months, (ii) the amount of Orders over the past six months not exceeding the inventory or safety stock of Goods held by tesa, or (iii) any termination of any other agreement between the Parties, incorporating these terms by reference or annex.

## **6. Cancellation; Suspension**

**6.1. Cancellation by tesa.** tesa shall have the right to cancel any Order, in whole or in part, for any reason at tesa's convenience, upon reasonable written notice to Buyer. Such notice shall specify the effective date and the extent of cancellation. tesa shall refund to Buyer any payment made by Buyer for the undelivered portion of any such Order. As long as the effective date of the cancellation is following at least five (5) Work Days after such notice, it shall be deemed reasonable. Buyer hereby waives all claims for damages associated with any cancellation, including, but not limited to, any claim for loss of profit in relation to cancellation hereunder.

**6.2. Suspension by tesa.** If, at any time between the receipt of the Order and final delivery of the Goods, the financial condition of Buyer reasonably justifies such request, tesa may require adequate assurance of Buyer's due performance or cash in advance (CIA) terms and may suspend delivery until such assurance or CIA payment is received. tesa additionally may suspend an Order, or all Orders, including without limitation any accepted Orders or any shipment in progress, until all past-due invoices have been paid in full by Buyer. tesa shall have no liability to Buyer for delays in delivery caused by exercise of its rights under this Section 6.2.

**6.3. Cancellation by Buyer.** Following acceptance of an Order by tesa, Buyer may cancel any portion of the Order, if and only if: (a) no more than 48 hours have passed since tesa's acknowledgement in any form of the Order; and (b) the Goods have not been tendered to the Carrier. Any requests for cancellations must be made in writing to tesa. If only a portion of the initial Order is canceled by Buyer, tesa reserves the right to cancel the entire Order. In the event tesa permits a partial Order cancellation by Buyer, the remaining items must meet any applicable MOQ or Buyer may incur additional freight charges. Orders for Specialty Items may not be cancelled by Buyer, and tesa shall not refund any payment made for Specialty Items.

## 7. Deliveries

**7.1. Delivery Term.** The Order shall be a shipment contract, and unless otherwise indicated therein, the Goods will be delivered **F.O.B. origin** (tesa's factory, distribution center, or warehouse), as defined by MCL § 440-2319(a). Prices for other delivery terms shall be adjusted as indicated herein.

**7.2. Partial Delivery.** tesa reserves the right to make partial shipments of the Goods, and to submit invoices for such partial shipments. If any portion of the Goods is not delivered or is undeliverable by tesa, or is not in accord with the description contained in the applicable Order, the Order for the remainder of the Goods and the respective obligations of Buyer and tesa in connection therewith shall in no way be affected.

**7.3. Same-Day Shipment.** In the event that Buyer requests same-day shipment of the Goods, the Order must be completed and received by tesa prior to 11:30am EST on a Work Day in which tesa is accepting Orders. Notwithstanding the foregoing, tesa shall, in its sole discretion, have the right to accept or reject any Order for same-day shipment. Any and all such Orders shall be subject to additional freight charges, as provided to Buyer by tesa upon shipment of the Goods.

**7.4. Shipping/Delivery Dates.** All inspection, delivery, and other dates of tesa's performance are estimates only. Where a shipping/delivery date is specified by tesa, that date reflects tesa's estimate for the probable time required for completion of the Order, based on tesa's then-current manufacturing capacity and scheduling. Where a lead time is specified by tesa, such lead time is based on a five-day work week. All shipping dates are approximate and shall be computed from the date of entry of the Order on tesa's books. All shipping/delivery dates and lead times are further subject to tesa's prompt receipt of Buyer's credit application acceptable to tesa, such other Buyer and order information requested by tesa, and satisfaction of any other conditions under the Order and requests of tesa.

**7.5. Delays due to Buyer.** If shipment of any Goods or other performance by tesa is delayed at the request of or due to the fault of Buyer, tesa may at its option hold the Goods or delay the performance of the Services at the place of manufacture or other location designed by tesa, all at the risk and expense of Buyer, from the time the Goods are ready for shipment or Services are ready to be performed. In the event of any such delay, tesa will issue an invoice and full and final payment shall be due and payable thirty (30) days after Buyer is notified that that the Goods are ready for shipment or the Services are ready to be performed. If tesa is unwilling to accommodate Buyer in accordance with this Section 7.5, then Buyer agrees to accept delivery of the Goods or provision of the Services immediately. Any rescheduling at Buyer's request, if agreed to by tesa, is subject to an additional charge, which will be invoiced by tesa and paid by Buyer.

**8. Title; Risk of Loss.** Title and risk of loss shall be as determined by the applicable delivery term. For F.O.B. origin deliveries, title in the Goods shall pass to Buyer, and Buyer shall assume the risk of loss and damage thereto, after the Goods are tendered to the applicable Carrier. tesa's breach of the Order shall not affect the passing of the risk of loss to Buyer. Notwithstanding any provision of law to the contrary, and regardless of the transfer of title and risk of loss, each shipment shall remain subject to tesa's security interest, right of stoppage, reclamation and/or other legal rights that tesa may have pursuant to these Terms, applicable law, or otherwise.

### III. PRICES AND PAYMENT

#### 9. Prices

**9.1. Standard Pricing.** Prices for Goods are based on an F.O.B. origin delivery term, a full container, and any applicable MOQ, with standard shipping. If the Parties agree on another delivery term, a partial shipment, an exception to an applicable MOQ, or same-day shipping, an additional charge(s) will be assessed as indicated hereunder. Each Order for immediate shipment will be billed at the prices in effect on the date the Order is received by tesa. An Order specifying a future-dated shipment will be billed at the prices in effect on the date of shipment; however, when Buyer is prepared to take immediate shipment and the delay with shipment is due to the exclusive decision of tesa, the Order will be billed at the prices in effect when it is originally placed.

**9.2. Additional Exclusions.** tesa's prices do not include any present or future sales, use, excise, value-added, or other municipal, state, federal, provincial, or other taxes now in effect or hereafter levied, duties and tariffs, transportation charges (such a freight, insurance, shipping, storage, handling, or similar charges), or demurrage or other charges. Consequently, in addition to the prices specified on the applicable price list or otherwise in the Order, Buyer shall pay, or reimburse tesa for the payment of, any and all such taxes, charges, or duties or other items of every kind (excluding any tax or millage based upon tesa's net income or property) with respect to the production, processing, transportation, export, import, storage, delivery, sale, installation, or promotion of the Goods. In all cases, Buyer is solely responsible for any demurrage or other charges incurred by tesa as a result of delivery delays caused by Buyer or rescheduling requested by Buyer. In the event that the Order expressly provides that any of the foregoing charges are specifically included in the price, any charges attributable to increases in applicable rates after the date such price is quoted to Buyer shall be added to the price and paid by Buyer.

**9.3. Validity of Quotations.** Unless otherwise specified in writing by tesa, prices contained in an individual written quotation or proposal from tesa are firm only for 30 (thirty) Days from the date of the quotation or proposal; however, tesa reserves the right to change prices during such 30-Day firm period in the event of increases in the cost of raw materials or changes in tariffs, customs, duties, or other governmental fees, taxes or assessment, changes in other inputs, or adverse currency fluctuations.

**9.4. Prices Subject to Change; USD.** Prices shown in tesa PRO, on price lists, or otherwise (except as provided for in Section 9.3 above, are subject to change without advance notice. All prices are in United States dollars unless otherwise indicated by tesa.

**9.5. Changes; Incomplete/Inaccurate Information.** In the event Buyer requests changes to the Goods or Services after the date of quotation, tesa may unilaterally increase the price to cover increased costs (plus reasonable overhead and profit) associated with the changes, including without limitation increased costs of design, materials, and/or manufacturing. Notwithstanding the foregoing, tesa shall be under no obligation to honor such requested changes. Notwithstanding anything in the Order to the contrary, tesa also may add to the price to recover any adverse material economics or currency fluctuations incurred by tesa during the term of the Order.

## 10. Payments

**10.1. Invoices.** Invoices may be rendered separately for each shipment (or provision of Services), including any early shipment (or provision of Services), made by tesa. Buyer shall be liable for the price of all Goods and Services substantially conforming to the Order, notwithstanding that Buyer may not have accepted or may have revoked acceptance of same.

**10.2. Payment Term.** Unless otherwise specified in writing, tesa's standard payment term of **1% 10 net 30** (a 1% discount applies within 10 Days from the date of the invoice, and payment in full must be made within 30 Days from the date of the invoice) applies to each Order. In case of partial shipments, the applicable payment term applies to the amounts invoiced for the portion of such Order shipped to Buyer.

**10.3. Payment Methods and Due Dates.** Each payment by Buyer to tesa may be made via check, wire transfer, or ACH, according to instructions indicated on the invoice issued by tesa. For any discount under the agreed Payment Term to apply, as applicable the check must be received by tesa within the number of Days specified on the invoice, or the wire transfer or ACH must already be deposited into tesa's bank account. Similarly, payment by the deadline means that, as applicable the check must be received by tesa within the number of Days specified on the invoice, or the wire transfer or ACH must already be deposited into tesa's bank account. Any other form of payment authorized by tesa shall be subject to such additional requirements as notified by tesa.

**10.4. Late Payments.** tesa may assess an additional charge of 1.5%, but not to exceed the lawful maximum, for each partial or full month that any amount of an invoice has not been paid by the applicable due date. Additionally, in the event that payment for one or more Orders is late, tesa reserves the right not to accept any pending or future Order, as well as to suspend any Order in process, until all past-due and current invoices have been paid in full. When an Order is rejected or suspended under this Section 10.4, the period for delivery shall not commence unless and until past-due amounts have been paid in full.

**10.5. No Withholding or Offset.** Buyer shall pay the full purchase price of the Goods and any other amount due hereunder regardless of any offset or claim that may be asserted by Buyer or on Buyer's behalf against tesa. Buyer shall have no right to withhold, recoup, setoff, or deduct any payments to compensate for any claims against tesa, and Buyer waives any and all existing or future claims and offsets against the full purchase price of the Goods or any other payments due hereunder. In the event that Buyer disputes an invoice (or any portion thereof), Buyer shall pay the undisputed portion as required by these Terms, and, upon resolution of the dispute, Buyer promptly shall pay in full any further amount due and owing.

**10.6. Buyer Responsibility for Collection Costs.** Buyer shall be responsible for all reasonable costs of collection, including attorneys' fees, incurred by tesa in collecting or attempting to collect amounts owed by Buyer.

## IV. INSPECTION; WARRANTIES; RETURNS

**11. Inspection by Buyer; Notice.** tesa shall not be required to conduct testing unless specific procedures have been specified in the Order and designated as tesa's responsibility. On request, tesa

will quote to Buyer additional charges required to conduct any acceptance procedures requested by Buyer. Buyer, within 7 (seven) Days after delivery of any Goods or provision of Services, shall inspect such Goods and Services and provide immediate notice of any shortages, defects, and non-conformities discoverable through inspection. Any inspection by Buyer shall be paid by Buyer, whether or not any rejection occurs. Carriers, not tesa, are responsible for Goods lost or damaged in transit. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and otherwise covered by tesa's warranty, will be at Buyer's expense. In the case of matters not discoverable through inspection, Buyer, within 30 (thirty) Days after delivery of any Goods or provision of Services, shall notify tesa in writing of any other shortages, defects, and nonconformities. Buyer's acceptance of Goods tendered or Services provided under the Order shall be final and irrevocable. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to the remedies specifically provided in these Terms.

Notwithstanding anything herein to the contrary, Buyer shall not be entitled to reject the Goods if tesa delivers up to and including 10% more or less than the quantity of the Goods ordered. Further, the retention of the Goods beyond the foregoing 30-Day period, or the use of the Goods or Services for any purpose whatsoever, shall constitute an unconditional, irrevocable acceptance by Buyer, and no claim against or liability of tesa shall survive or be enforceable against or recovered from tesa beyond this period, except as otherwise expressly set forth herein.

## **12. Warranty**

**12.1. General.** Except as otherwise indicated herein, tesa warrants that the Goods shall be free from defects in material and workmanship under normal use, service, and Proper Storage Conditions for a period of one (1) year following the date of shipment by tesa to Buyer or its designee. tesa warrants that any Services will be provided in a professional and workmanlike manner.

**12.2. Exceptions.** Notwithstanding Section 12.1, tesa warrants that the: (a) Goods of an electrical and electronic nature shall be free from defects in material and workmanship under normal use, service, and Proper Storage Conditions for a period of six (6) months following the date of shipment; and (b) Goods comprised in whole or in part of repulpable tapes, which must be stored in accordance with the temperatures and relative humidity conditions provided by tesa, shall have the defined shelf life as specified in writing by tesa.

**13. WARRANTY DISCLAIMER.** THE LIMITED EXPRESS WARRANTIES SET FORTH IN SECTION 12 ARE IN LIEU OF ALL OTHER WARRANTIES, AND TESA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, USAGE OF TRADE, OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICES. tesa does not warrant that its Goods and Services are in compliance with any industry standards, guidelines, or procedures, or with the requirements of any safety or environmental code or regulation of any federal, state, municipality, or other jurisdiction unless otherwise specifically provided in these Terms. Buyer is solely responsible for evaluation and selection Goods and affirms that it has not relied upon tesa's skill or judgment to select or furnish the Goods and Services for any particular purpose beyond the specific express limited warranties in these Terms. Any information, recommendations, and descriptive information furnished by tesa, whether through descriptions, shipping specifications, illustrations in catalogues, brochures, and prices lists or otherwise, do not, and shall not, constitute a warranty. The Goods and Services are sold upon the understanding

that Buyer will independently determine the suitability of the Goods and Services for its purposes. All properties of the Goods and Services described in tesa price lists, catalogs, and other materials are averaged values, and should not be used in determining specifications or use of such Goods and Services by Buyer and do not give rise to any extension of the limited express warranty set forth in these Terms. tesa is not responsible for any errors or omissions in any such information, recommendations, descriptive information, price lists, catalogs, and other materials, and/or for any loss or damage resulting from reliance thereon.

#### **14. Warranty Returns and Limitations**

**14.1. Warranty Returns.** If any Goods or Services fail to conform to the warranties set forth in Section 12, Buyer's sole and exclusive remedy shall be limited to replacement of such nonconforming Goods or Services. In the event Buyer elects to pursue such remedy, Buyer must contact tesa regarding such warranty claim and submit evidence of non-conformity (such as samples or photographs). If tesa determines, in its reasonable discretion, that such Goods are defective pursuant to these Terms, then tesa will issue a Return Material Authorization Number for Buyer to return the affected Goods to tesa and receive replacement Goods therefor. If on-site inspection by tesa is necessary, tesa shall bear its related costs in full if Buyer's claim of non-conformity is determined to be valid. Buyer shall reimburse tesa for any such costs if, in tesa's determination, the claim of non-conformity is without merit. Replacement Goods and Services provided to Buyer by tesa may be new, equivalent to new, or refurbished, and will be in good working order and at least functionally equivalent to the applicable Goods or Services being replaced. Unless tesa requests shipment by a designated carrier selected by tesa and pays such carrier directly, inbound shipping charges shall be prepaid by Buyer and reimbursed by tesa. tesa shall further pay all outbound shipping charges only for the replacement goods or services, which shipment shall otherwise be subject to the terms and conditions set forth in Section 14 herein. Any nonconforming Goods or Services that have been replaced by tesa shall become the property of tesa.

**14.2. Limitation of Remedies.** NOTWITHSTANDING ANYTHING SET FORTH IN THE ORDER, AND TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TESA BE RESPONSIBLE OR LIABLE TO BUYER FOR ANY LOSS OF USE, REVENUE, OR ANTICIPATED PROFITS, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT, OR PUNITIVE DAMAGES IN CONNECTION WITH ANY BREACH OF WARRANTY (WHICH THE PARTIES ACKNOWLEDGE ARE EXPRESSLY LIMITED AND DISCLAIMED HEREIN) OR OTHER BREACH OF TESA'S OBLIGATIONS UNDER THE ORDER. TESA'S AGGREGATE LIABILITY FOR ANY DAMAGES OR CLAIMS ARISING OUT OF RELATING TO THE ORDER OR ANY GOODS AND SERVICES PROVIDED UNDER SUCH ORDER SHALL IN NO EVENT EXCEED THE AMOUNT BUYER PAID FOR THE GOODS AND SERVICES GIVING RISE TO THE CLAIM OR DAMAGES. BUYER WAIVES ANY CAUSES OF ACTION OR THEORIES OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, THOSE ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, PRODUCT LIABILITY, STATUTE, OR OTHERWISE, INCLUDING WITHOUT LIMITATION THOSE SPECIFICALLY PROVIDED BY THE UCC, AS ADOPTED IN MICHIGAN, WHICH THE PARTIES HEREBY ACKNOWLEDGE ARE BEING MODIFIED AND LIMITED BY THESE TERMS TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**15. Non-Warranty Returns.** Goods not otherwise subject to Section 14 may not be returned without prior written authorization from tesa, which may be withheld in tesa's sole discretion, and in case no more than 30 (thirty) days following the date of shipment. If tesa elects to accept return of such Goods, tesa will issue a Return Material Authorization Number for Buyer to return the Goods to tesa. tesa shall have the right to charge a restocking fee of 20% for all returned Goods, and Buyer shall pay

the cost of delivering the Goods to tesa's facility, along with all outbound charges pursuant to Section 7 herein. Only full cases will be accepted for return. All returned Goods shall become the property of tesa.

## V. MISCELLANEOUS

**16. Independent Relationship.** The Order does not create, and shall not be construed as creating, a teaming, joint venture, or further commitment or obligation by either Party. Neither Party shall be the legal agent of the other for any purpose whatsoever, and neither Party has any right or authority to make or underwrite any promise, warranty, or representation, to execute any contract, or otherwise to assume any obligation or responsibility in the name of or on behalf of the other Party.

### **17. Buyer's Responsibilities**

**17.1. Compliance with Laws.** Buyer shall comply with all applicable laws, regulations, ordinances, codes, judgments, decrees, and orders (including procurement of required permits or certificates) applicable to its purchase, receipt, use, and re-sale, as applicable, of the Goods. Buyer shall further adhere to all applicable U.S. export laws and regulations and shall not export or re-export any Goods, Confidential Information, or other technical data received from tesa to any person or company who is a legal resident of, or is controlled by a legal resident of, any country to which such action is prohibited by applicable United States law.

**17.2. Subsequent Purchasers.** Unless specifically agreed to in writing by tesa, Goods that are sold specifically for Buyer's use shall not be repackaged, resold, or redistributed. In the event Buyer subsequently sells the Goods to a third-party purchaser, or incorporates the Goods into products sold to a third party, only those representations and warranties contained herein and pertaining to the Goods shall apply to such sales to a third party and the Goods following such sales; provided, however, in all cases the limitations, waivers, and disclaimers set forth in these Terms shall also apply. Buyer's agreement with any such third-party purchaser shall include terms and conditions, regarding Confidential Information and use of the Goods or otherwise, which afford at least as much protection to tesa and include the limitations, waivers, and disclaimers in favor of tesa as set forth in these Terms, and tesa shall have no liability for any representations or warranties made by Buyer in addition to, or inconsistent with, the representations, warranties, limitations, waivers, and disclaimers contained herein. tesa's liability in regard to any Goods shall, notwithstanding any agreement to the contrary between Buyer and a third-party purchaser of the Goods, remain at all times solely as set forth in these Terms. Buyer shall indemnify, hold harmless, and defend tesa from and against any Third-Party Claim related to representations or warranties regarding the Goods made by Buyer or any other third party which are in addition to or inconsistent with the limited representations and warranties made herein by tesa or any failure by Buyer to provide tesa such protections, limitations, waivers, and disclaimers as are set forth herein.

**18. Confidential Information.** Without the prior written consent of tesa, Buyer: (a) may use or reproduce Confidential Information only as is necessary for performance of its obligations hereunder; and (b) shall not disclose Confidential Information to any other person or entity other than its employees, agents, affiliates, and contractors (in each case, with a need to know and who are subject to appropriate confidentiality policies or are bound by appropriate confidentiality agreements with terms at least as protective as the terms set forth herein) or to Buyer's legal counsel with a

need to know. The Confidential Information shall be owned solely and exclusively by tesa. Upon the reasonable request of tesa, all Confidential Information, together with any copies that may be authorized herein, shall be returned to tesa or, if requested by tesa, certified as destroyed by Buyer. tesa shall have the right to seek injunctive relief, without the necessity of posting any bond, upon any violation or threatened violation of the terms of this Section 18, in addition to all other rights and remedies available under the Order, applicable law, or otherwise. If and to the extent of a separately concluded Non-Disclosure Agreement between tesa and Buyer, this Section shall be deemed an expansion of and not a limitation of any and all rights, remedies, and obligations under such Non-Disclosure Agreement; provided, however, in the event of an inconsistency, the Non-Disclosure Agreement shall prevail over this Section 18.

## **19. Intellectual Property**

**19.1. No transfer of Intellectual Property Rights.** tesa may provide information regarding the Goods and services, including technical information, specifications, and other materials (collectively “tesa Information”). tesa Information is subject to change at any time without notice, and tesa does not guaranty the accuracy or completeness of such tesa Information. Buyer acknowledges and agrees that (i) no transfer of any of tesa’s proprietary technology, inventions, developments, improvement, art, ideas, art form, or the like, including but not limited to patents, patents applications, trademarks, copyrights, or trade secrets (collectively, “Intellectual Property”) is intended in connection with the Order, and (ii) no licenses are granted or implied with the provided tesa Information.

**19.2. Adverse Actions.** In connection with Goods and Services purchased from tesa, Buyer shall not bring, induce any third party to bring, or assist any third party in bringing any claim against tesa alleging infringement of any intellectual property rights owned or controlled by Buyer or any of its Affiliates and related to such Goods or Services.

**19.3. Inventions.** All Goods, Services, any improvements or derivatives of the Goods or Services, and other deliverables, data, inventions (whether or not patentable), industrial designs, technical information, know-how, processes of manufacture, and other intellectual property and information created, developed, conceived, or first reduced to practice by or on behalf of tesa (including without limitation by any person or entity employed by or working under the direction of tesa), along with all intellectual property rights relating thereto, are the sole and exclusive property of tesa. Buyer will promptly disclose in an acceptable form and assign to tesa all such deliverables, data, inventions (whether or not patentable), industrial designs, technical information, know-how, processes of manufacture, and other intellectual property and information. Buyer will cause its employees to sign any papers necessary to enable tesa to file applications for patents throughout the world and to record rights in and to such intellectual property.

**20. Data Protection/Retention Period.** Buyer shall maintain a reasonable risk-based cybersecurity program, supported by appropriate policies and procedures, consistent with the highest industry standards, to protect the confidentiality and integrity of Confidential Information, prevent fraud, comply with applicable laws and regulations, and reduce the risk of cybersecurity incidents. Buyer shall notify tesa of any cybersecurity incident that affects the confidentiality and integrity of Confidential Information, or otherwise could be reasonably expected to adversely affect tesa. Buyer shall indemnify, defend, and hold tesa harmless from any cybersecurity incident involving Buyer which affects tesa.

**21. Security Interest.** In addition to any security interest granted under the Uniform Commercial Code (UCC), as adopted under Michigan law, in order to protect tesa's interest in the Goods and in consideration of the mutual promises contained herein, Buyer hereby agrees to and does hereby grant to tesa a security interest in all of the Goods sold to Buyer by tesa, and the proceeds and products therefrom, for the purpose of securing unto tesa the payment of any and all indebtedness, liabilities, and obligations of Buyer to tesa, due or to become due, and whether or not now existing or hereafter arising under the Order, applicable law, or otherwise. Buyer agrees to execute any additional agreements, assurances, or documents necessary to evidence this security interest or perfect this security interest as required by law, including without limitation UCC-1 financing statements. In addition, Buyer hereby grants to tesa a power of attorney, and Buyer hereby authorizes tesa to sign Buyer's name to and to file any additional agreements, assurances, or documents necessary to evidence this security interest or necessary to perfect this security interest as required by law, including without limitation UCC-1 financing statements.

**22. Limitation of Liability.** BUYER'S REMEDIES SET FORTH IN THESE TERMS ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BUYER UNDER OR IN CONNECTION WITH ANY AND ALL ORDERS, THE GOODS, AND SERVICES, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, REGULATION, OR ANY OTHER LEGAL THEORY, LAW, OR OTHERWISE, REGARDLESS OF WHETHER SUCH CLAIMS AND RESULTING DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS AND RESULTING DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSES. ALL OTHER REMEDIES ARE EXPRESSLY DISCLAIMED AND WAIVED BY BUYER. NOTWITHSTANDING ANYTHING SET FORTH IN THE ORDER TO THE CONTRARY, TESA SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY LOSS OF USE, REVENUE, OR PROFIT, LOSS OF ANTICIPATED SALES OR BUSINESS OPPORTUNITIES, INTERRUPTION OF BUSINESS, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT, OR PUNITIVE DAMAGES OR CLAIMS.

EXCEPT FOR TESA'S OBLIGATIONS UNDER SECTION 23, AND NOTWITHSTANDING SECTION 14.2, TESA'S TOTAL AGGREGATE LIABILITY, WHETHER ARISING FROM OR RELATING TO ANY AND ALL ORDERS, TO THE CONDUCT OF BUSINESS BETWEEN THE PARTIES, AND/OR TO ANY AND ALL DAMAGES OR CLAIMS BASED UPON BREACH OF WARRANTY (ALTHOUGH THE PARTIES ACKNOWLEDGE ARE EXPRESSLY LIMITED AND DISCLAIMED HEREIN), BREACH OF CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, REGULATION, OR ANY OTHER LEGAL THEORY, LAW, OR OTHERWISE (REGARDLESS OF WHETHER SUCH DAMAGES OR CLAIMS WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSES) SHALL IN NO EVENT EXCEED FOR ANY AND ALL SUCH MATTERS, MEASURED CUMULATIVELY AND IN THE AGGREGATE, THE TOTAL PAYMENTS MADE BY BUYER TO TESA FOR GOODS AND/OR SERVICES DURING THE FIRST TWELVE (12) MONTHS FOLLOWING TESA'S FIRST SHIPMENT OF GOODS OR PROVISION OF SERVICES TO BUYER.

## **23. Indemnity**

**23.1. Indemnification by Buyer.** Except for claims arising solely due to the gross negligence or willful misconduct of tesa, Buyer hereby agrees to indemnify, hold harmless, and defend tesa, its

Affiliates, and their respective shareholders, members, officers, directors, employees, representatives, and agents (collectively, “tesa Indemnified Parties”), from and against any and all third-party suits, claims, costs, actions, proceedings, losses, damages (including without limitation punitive damages), expenses (including without limitation attorney and expert fees of such third parties as well as of Buyer or tesa in defending such third party matters), obligations, liabilities, and liens, whether arising under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise, alleging product defects, injury to persons, economic damages, injury to property, or otherwise arising from or relating to the possession, operation, storage, use, ownership, selection, leasing, maintenance, delivery, transportation, manufacture, sale, purchase, condition, or return of the Goods or Services, or of supplies or materials used in connection with the Goods or Services (any and all of the foregoing referenced herein as a “Third-Party Claim”). Notwithstanding anything herein to the contrary, Buyer is obligated in any and all events to indemnify, hold harmless, and defend tesa and the tesa Indemnified Parties if the Third-Party Claim asserted is inconsistent with the limited representations and warranties made herein by tesa or any failure by Buyer to provide tesa such protections, limitations, waivers, and disclaimers as are set forth herein. Buyer agrees that, upon written notice from tesa of any Third-Party Claim, Buyer shall assume full responsibility for the defense of any such Third-Party Claim.

**23.2. Indemnification by tesa.** Except for Third-Party Claims arising out of or relating to the gross negligence or willful misconduct of Buyer or any of its employees, representatives, or agents, but in all cases subject to the limitations of Sections 14.2 and 22, tesa agrees to indemnify, hold harmless, and defend Buyer, its affiliates and their respective officers, directors, employees, and agents, from and against any and all Third-Party Claims caused by the gross negligence or willful misconduct of tesa, its employees or any agents (conducting business on behalf of tesa) while on Buyer’s premises.

**23.3. Express Remedies Relating to Patents, Other Intellectual Property Rights.**

**23.3.1. tesa Obligations.** tesa will defend and indemnify Buyer only against all suits and pay all damages and costs finally adjudicated against Buyer for infringement of United States patents by the Goods purchased under the Order; provided that Buyer will promptly notify tesa in writing of any claim asserted and suit or action brought against Buyer alleging that the Goods purchased under the Order infringe one or more United States patents, and provide tesa with assistance and information requested by tesa for its defense, and provided that the indemnity of tesa hereunder shall not extend to (1) Goods that are supplied by other vendors and that are resold by tesa hereunder without alteration or change and which shall only have the warranty furnished by said vendor (which, to the extent tesa is permitted by the vendor to do so in the applicable purchase documentation, tesa passes on to Buyer), and (2) claims, suits, or actions for infringement based upon modification of the Goods or Services, the use of any Goods or Services in combination with materials, products, apparatuses, circuits, or devices not furnished by tesa or upon the use of any such combination, or based upon the application or use to which such Goods or Services are put, including any application or process performed or facilitated by such Goods or Services (“Excluded Claims”). tesa shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action tesa deems appropriate to prosecute or settle claims that are subject to tesa’s indemnity obligations under this Section 23.3.1. Buyer shall not be entitled to indemnification or contribution from tesa with respect to any Excluded Claims. Notwithstanding the foregoing, tesa shall have the right, in its sole discretion and at its expense, in lieu of or in addition to the obligations under this Section 23.3, either to (a) procure for Buyer the

right to continue using such Goods, (b) replace such Goods with non-infringing products and services of at least equal function and quality, (c) modify such Goods so that they become non-infringing, or (d) request the return of such Goods and refund the price (to the extent paid by Buyer) less an allowance for depreciation and shipping costs thereof. THE FOREGOING EXPRESSES THE ENTIRE OBLIGATION AND LIABILITY OF TESA WITH RESPECT TO INFRINGEMENT OF PATENTS OR MISAPPROPRIATE OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED BY TESA TO BUYER.

**23.3.2. Buyer Obligations.** Buyer will indemnify tesa and the tesa Indemnified Parties against and defend all suits and pay all damages (including attorney and witness fees) and costs awarded against tesa or any tesa Indemnified Parties arising out of any Excluded Claims. In addition, Buyer will indemnify tesa and the tesa Indemnified Parties against and defend all suits and pay all damages and costs awarded against tesa or any tesa Indemnified Parties with respect to claims of infringement for the Goods manufactured or Services provided wholly or partially to Buyer's design, direction, instructions, or specifications.

**24. Remedies.** In the event Buyer breaches any of these Terms, or any Order governed hereby, tesa may, in its sole discretion: (a) recover from Buyer the full purchase price and any other amounts then due and as shall thereafter become due to tesa; (b) recover from Buyer all costs and expenses incurred by tesa due to Buyer's breach (including attorneys' fees and costs of collection, as further provided herein); and/or (c) exercise any other right or remedy available to tesa by contract, applicable law, or otherwise. No right or remedy of tesa referred to in this Section 24 or any other section of these Terms is intended to be exclusive, but each shall be cumulative and in addition to all rights and remedies available to tesa by contract, applicable law, or otherwise.

**25. Assignment.** The Order and Buyer's rights and obligations under the Order may not be assigned, pledged, hypothecated, or otherwise transferred by Buyer except with the prior written approval of tesa, which shall not be unreasonably withheld. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this Section. For purposes of this Section, an assignment includes without limitation (a) any direct or indirect, voluntary or involuntary, transfer of any of Buyer's rights and/or obligations hereunder by contract, by merger, by purchase/sale of assets and/or by contribution to a joint venture, and/or (b) any transfer of majority ownership of Buyer or any transaction involving equity or other voting interests in Buyer or Buyer's equity holder(s) which have the effect of transferring voting control of Buyer (such as the ability to elect more than half of the board of directors or similar governing body). tesa may freely assign any and all rights and obligations it has under the Order and may subcontract performance of any aspect of the Order.

**26. Time Period for Buyer Claim.** Any proceeding by Buyer for breach of the Order or any other rights or remedies against tesa arising from or in connection with the Order cannot be commenced or maintained unless it is commenced by arbitration pursuant to Section 29 within one (1) year after the cause of action has accrued. An action of Buyer shall accrue no later than shipment of the Goods or commencement of the provision of Services by tesa.

**27. U.S. Government Laws and Regulations.** Buyer shall not engage in any transaction with respect to the Goods or Services, by way of use, resale, lease, shipment, export, or otherwise, which violates any statute or regulation of the United States of America or any state or territory of the United States of America.

**28. Applicable Law; Jurisdiction.** The rights and duties of the Parties, and the performance, construction, and interpretation of any Order, shall be governed by and construed according to the laws of the State of Michigan, without regard to its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods is excluded in full. State courts in Kent County, Michigan and federal courts in the Western District of Michigan shall have exclusive jurisdiction over the Parties and the claims arising under any Order, subject to the provisions of Section 29 below regarding arbitration. Neither Party shall assert any objection to such jurisdiction or that venue in any such court is inconvenient or otherwise improper. Buyer and tesa consent to service of process by personal delivery or by postage prepaid, certified U.S. mail, mailed to the address for such Party provided for in Section 33.

**29. Arbitration.** All controversies and claims arising out of or relating in any way to the Order, and/or any breach thereof, to the extent the Parties are unable to settle such matter amicably, shall be determined solely by arbitration held in Grand Rapids, Michigan, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except (1) tesa may elect to institute, prior to formation of the arbitration panel, an action for claim and delivery, replevin, or similar relief to enforce its interests or rights in the Goods or Services, and (2) either Party may seek injunctive relief from a state court located in Grand Rapids, Michigan or federal court in the Western District of Michigan to enforce provisions of the Order relating to confidential information or intellectual property, and thereafter enforcement of any injunctive relief awarded by such courts may thereafter occur in any court having proper jurisdiction.

Upon the filing of a demand for arbitration by tesa or Buyer, Buyer shall deposit with the arbitrator(s) any unpaid portion of the price for any and all Goods and Services and any other unpaid amount under the Order to be held in an interest-bearing account. If such deposit is not made, the arbitrator(s) shall enter a final award against Buyer in the amount of the unpaid price and other amounts owed by Buyer to tesa under the Order.

The number of arbitrators shall be one (1), and the arbitrator's decision shall be final and binding and judgment upon any arbitration award may be entered or enforced in any court having proper jurisdiction. The arbitrator may enter an interim award that the Goods be returned to Buyer for appropriate disposition, with tesa applying any proceeds to amounts owed by Buyer. In the event a Party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other Party is entitled to costs of suit including reasonable attorneys' fees for having to compel arbitration or defend or enforce the award. For purposes of this clause, the Parties hereby submit to the jurisdiction of the federal and state courts in the State of Michigan.

The arbitrator(s) may include the arbitration fees in an award. Notwithstanding anything herein to the contrary or in the Commercial Arbitration Rules of the American Arbitration Association, the arbitrator shall be bound to follow these terms of the Order, shall not apply principles of equity or allow any claims not permitted by the Order, may only award or grant to the Parties such remedies as a court of competent jurisdiction in Michigan could award or grant and which are authorized and not excluded or otherwise limited under the Order, and may not award damages or remedies that are expressly limited or waived under these Terms.

**30. Force Majeure.** tesa shall not be liable for any delay or non-performance hereunder due to Force Majeure, as defined herein. In the event of a Force Majeure occurrence, tesa shall notify Buyer, and the Parties shall, in good faith, attempt to find a commercially reasonable solution for mitigating the effects thereof, including without limitation the possibility of extending delivery times by the duration of the Force Majeure event. In any event, upon a Force Majeure occurrence, tesa may suspend performance during the entirety of the Force Majeure and for a reasonable period thereafter and/or may cancel any unfilled quantities of the Order without further liability of any kind.

**31. Amendments; Modifications.** These Terms and the Order governed hereby are the complete and exclusive statement of the agreement of the Parties and supersede any and all other promises, covenants, representations, warranties, agreements, or understandings, whether written or oral, which may have been previously made or entered into by the Parties. No amendments, modifications, supplements, limitations, rescissions, waivers, or discharges of these Terms or any Order shall bind tesa unless agreed to in a writing signed by an Authorized Representative of tesa making express reference to these Terms. No sales or service representative of tesa is authorized to alter, vary, or waive any of these Terms or any rights or remedies under the Order. The non-exercise by tesa of any right, power, or option given hereunder, or decision not to insist upon the strict compliance of the Order, shall not constitute a waiver by tesa of any provision with respect to that or any other or subsequent breach thereof, nor a waiver by tesa of its rights at any time thereafter to require strict compliance with all provisions of the Order, including without limitation any provision for which tesa has declined to exercise such right, power, or option. Notwithstanding anything in the Order to the contrary, no amendment, modification, supplement, limitation, rescission, waiver, or discharge of any provision of the Order shall affect Buyer's liabilities to tesa accrued prior thereto unless and to the extent agreed to in a writing signed by an Authorized Representative of tesa making express reference to this Section 31.

**32. Updated Versions of the Terms.** tesa reserves the right to issue updated versions of these Terms by providing to Buyer at least 30 (thirty) Days advance notice of the updated version hereof. Following such notice, if Buyer rejects in writing, within the 30-Day notice period, to any changes made through an updated version, the then-current version of the Terms will continue to apply.

**33. Notices.** All notices or other communications required under the Order shall be in writing, addressed to the applicable party in accordance with the contact information set forth below or as subsequently given by a notice provided in compliance with this Section 33, and shall be deemed given: (a) one Work Day after deposit with an overnight courier, when sent by overnight courier; (b) five Days after deposit with the U.S. Postal Service, when sent by registered or certified mail, postage prepaid; or (c) upon actual receipt by the addressee when sent by any other method. All notices to tesa should be directed to: tesa tape, inc., Attn: Legal Department, 25 Ottawa Ave. SW, Suite 500, Grand Rapids, MI 49503. Any notice to Buyer may be directed to Buyer's address provided with any order or delivery request from Buyer, the location to which Buyer requests the Goods or Services be provided, or such other known address of Buyer.

**34. Severability.** The unenforceability or invalidity of any provision in the Order shall affect that provision only. Remaining provisions in the Order shall continue in full force and effect. Any declaration of unenforceability shall be as narrow as possible.

**35. Battle of the Forms.** In the event tesa is deemed to accept any Buyer's purchase order or other writing, and such acceptance does not occur through a writing signed by an Authorized Representative of tesa making express reference to these Terms, any resulting contract and the liabilities and obligations of tesa shall be determined solely by these Terms and notice is hereby given that tesa objects to any such terms in such Buyer's purchase order or other writing. If there is an executed written agreement of any kind in effect between the Parties, these Terms form a part thereof. If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to tesa, these Terms are in lieu of any terms later submitted by Buyer, tesa rejects all additional or different terms of Buyer, whether confirmatory or otherwise, and expressly limits acceptance to these Terms. If tesa tenders these Terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then tesa's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms and such acceptance is expressly made in reliance on Buyer's assent to these Terms.