



Terms and Conditions of Sale

1. **Definitions.** For the purposes of these Terms and Conditions of Sale ("Agreement"), the following definitions shall apply:
 - (a) "Seller" means FIVES MACHINING SYSTEMS, INC as well as any entity controlling Seller, controlled by Seller, or under common control with Seller, that may sell goods and services to Customer from time to time.
 - (b) "Confidential Information," whether disclosed in written, oral, visual or tangible form, disclosed by Seller to Customer, shall include such Seller's financial, Customer, product, technical, and business information, including, but not limited to, product specifications, process designs, trade secrets, financial statements, strategic plans, Customer lists, marketing plans, personnel information, and know-how; provided, however, that "Confidential Information" shall not include any information that: (a) at the time of disclosure is generally available to the public or, after disclosure, becomes generally available to the public other than by a breach of this Agreement or by any breach of confidentiality by a third party; or (b) is already in the Customer's possession at the time of disclosure by the Seller and was not acquired directly or indirectly from the Seller; or (c) is later received by Customer on a non-confidential basis from a third party having the right to impart that information.
 - (c) "Intellectual Property Rights" shall mean all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
 - (d) Unless the context otherwise requires, "Product(s)" will refer to machine tool, assembly and measurement equipment and systems and related equipment; computer numerical controls ("CNC(s)"); programmable industrial controls ("PIC(s)"); parts, components, accessories and assemblies of all the foregoing (each, a "Part," and, collectively, the "Parts"); and computer software, firmware and related documentation sold or licensed by Seller ("Software Materials"), whether new, re-manufactured, or re-tooled.
 - (e) "Proposal" means any approximate price proposal, firm price proposal, rework proposal, or quotation issued to Customer by Seller and together with any attachments, exhibits or amendments thereto.
2. **Master Agreement.** This Agreement sets out terms and conditions applicable to all goods and services sold by any Seller to Customer from time to time, unless expressly agreed otherwise in writing by the applicable Seller. Seller is executing this Agreement on behalf of itself and each Seller providing goods and services hereunder. Each Seller will sell goods and services to Customer only under the terms and conditions of this Agreement. Except as expressly acknowledged by Seller as an amendment to this Agreement, all contradictory, additional or ambiguous terms and conditions contained in any purchase order or other writing (e.g. purchase order or proposal) of Customer are expressly rejected and will not apply to any order from or sale to Customer.
3. **Acceptance of Orders.** All orders from Customer are subject to acceptance by Seller. Customer's submission of a purchase order constitutes Customer's acknowledgement and consent to the terms and conditions of this Agreement. Any acceptance by Customer of Seller's Proposal is expressly limited to acceptance of this Agreement and any applicable Proposal. Seller's Proposal, this Agreement and any other provisions that are otherwise agreed to in writing by Seller constitute the complete and exclusive statement of the agreement superseding any differing statements, oral or written.
4. **Reliance on Customer Information.** Seller relies upon the accuracy, completeness and timeliness of any and all information furnished or to be furnished by Customer, including, but not limited to, any technical design, engineering and test data, manufacturing methodology, drawings, plans, designs and specifications, software such as computer aided engineering and design programs and models ("Customer Information"). Any inaccuracy in the Customer Information or delay in furnishing the Customer Information to Seller may result in increased costs or affect the timing of Seller's performance. In the event of such inaccuracy, Seller reserves the right to change the Proposal or any other document relating to the Products in order to correct such inaccuracy. Customer shall pay all such increased costs and be responsible for any delay in Seller's performance resulting, directly or indirectly, from any inaccuracy in the Customer Information or delay in furnishing the Customer Information. Customer represents and warrants that it is the owner of all Customer Information furnished to Seller and agrees to defend, indemnify and hold Seller harmless with respect to all claims of any third party of infringement or related claims associated with Seller's use or reliance upon the Customer Information.
5. **Cancellation of Orders.** All orders from Customer that are received and accepted by Seller are "firm" contracts and Customer may cancel only with Seller's written consent and upon payment of reasonable cancellation charges, including reimbursement of Seller's direct costs incurred, normal, indirect, and overhead charges, and a normal profit, all as reasonably determined by Seller. Seller will not accept cancellation, modification, suspension, or delay in shipment of Customer's order on terms that will not fully indemnify and reimburse the Seller against loss. Such indemnity will include recovery of all direct costs incurred, including normal indirect and overhead charges and a normal profit.
6. **Price.** Unless Seller agrees otherwise in writing, Customer agrees to pay Seller's price in effect at the time an order is accepted by Seller for all goods and services ordered. Customer also agrees to pay all applicable



Taxes (as defined below) and freight charges related to Customer's orders.

7. **Proposals.** If Customer is responding to a Proposal provided by Seller when ordering, then Customer shall include the Proposal number on all orders that are based on the Proposal. In general, each Seller holds quotations within Proposals open for thirty (30) days. However, unless expressly designated as "firm" for a specific length of time, all Seller Proposals, price lists, discount schedules, and other promotional programs, and freight schedules may be changed by Seller without notice. Prices that are based on the continued production of the quantity specified on a Seller Proposal are subject to change upon any change in such Proposal requested by Customer. Proposals are also subject to revision in case of clerical error.
8. **Catalogues, Price Lists, Discount Schedules, and Special Sales Terms.** Products advertised in Seller's catalogs, price lists, discount schedules, and special sales terms are subject to changes at any time and may not be kept in stock by Seller. Customer agrees that Seller shall not be held liable for any errors or omissions in its catalogs, price lists, discount schedules, and special sales terms, or any differences between any catalogue illustration and the goods and/or services provided to Customer.
9. **Pricing Changes, Taxes, and Fees.** Seller reserves the right to change its prices prior to formation of a binding agreement or as provided in an applicable Proposal. Unless otherwise stated in a Proposal to Customer, Prices are FCA Incoterms® 2010, and do not include sales, use or excise taxes, custom duties, or similar taxes and fees ("Taxes"), which are the responsibility of Customer in addition to the quoted price. To the extent that Seller is required to pay any Taxes related to the sale of goods and services under this Agreement, Seller will invoice Customer for such Taxes. Where applicable, the Customer will provide Seller with an effective tax-exemption certificate. Seller shall be entitled to retain any export duty drawbacks if Seller is the exporter of record.
10. **Payment Terms.** Payment terms, other than the prepayment of quoted prices, are subject to credit approval, which shall be granted or denied in Seller's sole discretion. Interest of one and one half percent (1.5%) per month may be assessed on all amounts not paid by Customer when due. To secure payment and Customer's other obligations, Seller retains and Customer hereby grants to Seller a security interest in all Products not fully paid for in advance by Customer. Customer will sign and deliver any financing statement agreement and other documentation or evidence of the security interest requested by Seller. Customer also hereby appoints Seller as Customer's attorney-in-fact for the execution and filing of such financing statements as may be necessary or desirable in order to protect Seller's interest in the Products. Unless payment terms are provided in an applicable Proposal, the payment terms for goods and services provided hereunder are as follows:

Shipments to the United States or Canada. If credit is granted to Customer by Seller, payment terms for shipments to the U.S or Canada will be: net cash due thirty (30) days from invoice date for: (i) all Parts, service work and license fees, including those for Software Materials;

(ii) PICs and CNCs; and (iii) all Products selling for less than US \$50,000.

Shipments outside the United States and Canada. If credit is granted to Customer by Seller for shipments outside of the United States and Canada, the same terms will apply as shipments to the United States or Canada, except that: (i) all payments must be made in U.S. dollars; (ii) parts and tooling not included as part of a machine order will be payable by direct collection letter, letter of credit ("LoC") or special arrangements made with Seller.

Payment for all other Products must be made by an irrevocable LoC drawn on an account at, and confirmed by, a U.S. bank and must: (i) cover the full amount of the purchase price, less the amount of any advance payment; (ii) accompany the order and carry an expiration date at least one hundred twenty (120) days beyond the scheduled shipping date; (iii) allow partial draws upon invoice coinciding with progress payments, and (iv) be otherwise payable upon presentation of bill of lading, commercial invoice, and packing list. If, however, Seller is unable to ship for any cause beyond Seller's reasonable control, Seller shall have the right to draw upon the LoC by furnishing a certificate of manufacture. Storage will be solely at Customer's expense and risk.

11. **Shipment and Delivery.** The shipping schedule and delivery dates may be provided in a Proposal and will generally be computed from the date of Seller's acknowledgment of the receipt of any required down payment and the Customer Information and approvals necessary to proceed with design and manufacture. Shipment and delivery may be subject to delays caused by changes in specifications and other Force Majeure events (as defined below) that are beyond Seller's control. All risk of loss and damage passes to Customer per Incoterms® 2010. In the absence of specific instructions from Customer, Seller may select the carrier and shipping route. All shipping and carrier charges are the sole responsibility of Customer and may be invoiced by Seller if incurred by Seller on behalf of Customer.
12. **Limited Warranty; Remedies.** Unless otherwise set forth below, or otherwise provided in an applicable Proposal, a defective or nonconforming Product or part thereof will be repaired or, at Seller's option, replaced free of charge, FCA Incoterms® 2010, if a warranty claim with regard to such defective or nonconforming part is made within twelve (12) months from the date of shipment (the "Limited Warranty"). Unless provided in an applicable Proposal, Seller does not warrant any Product beyond this twelve (12) month period (the "Limited Warranty Period"). The Limited Warranty does not cover or extend to: (a) any Product that has a life, under rated and normal usage, inherently shorter than the applicable warranty period (e.g., perishable tooling) or consumables, including without limitation, bulbs, filters, fuses, inserts, or recommended spare Parts or (b) normal adjustments or calibration, or the failures arising from Customer's failure to perform adjustments or calibrations; or (c) defect or nonconformance resulting from Customer's use of any Product in a manner that is inconsistent with Seller's documentation for such Product or is outside of Seller's anticipated use of such Product.

Seller may condition warranty replacement upon return of any defective or nonconforming Product or Part.



Customer shall pay the then-current list price for any replacement Parts unless the defective or nonconforming Part is returned to Seller within thirty (30) days of receipt of the replacement Part. Seller reserves the right to deny a warranty claim if the Customer erases, edits, or disables the CNC Error Log file or denies the Seller access to the information reasonably requested by Seller related to the defective or nonconforming Product or Part.

Parts manufactured and furnished by Seller that prove defective or nonconforming are only guaranteed for ninety (90) days, and will be repaired or replaced with a new or, at Seller's option, like-new part free of charge only if Customer makes a claim with regard to such defective or nonconforming Part within ninety (90) days from acceptance or, in the case of Parts supplied under warranty, until the expiration of the machine, equipment or system warranty, whichever is later. Such repair or replacement is Customer's exclusive remedy for a defect or nonconformance related to Parts.

Machine Tool Warranties. CNC retrofits on Seller machine tools are warranted in accordance with the Limited Warranty set forth above, except that the warranty period on labor is ninety (90) days ("CNC Labor Warranty"). The CNC Labor Warranty applies only to Parts replaced as part of the CNC retrofit, the failure of which are not caused by the machine or other Parts not replaced as part of the CNC retrofit. Such Parts replacement is Customer's exclusive remedy for CNC retrofits. Any complete machine tool returned to Seller's factory for rebuild or remanufacture to original tolerances and specifications will be warranted in accordance with the Limited Warranty set forth above. Mechanical assemblies or other components rebuilt by Seller or provided on an exchange basis, such as boring and facing heads, transmissions, headstocks, drive units, etc. will be warranted in accordance with the Limited Warranty set forth above, except that such warranty claims must be made within six (6) months from date of shipment from Seller's factory. Cutting tools and holders are warranted in accordance with the applicable Proposal, if any. Other tooling manufactured by Seller will be warranted in accordance with the Limited Warranty outlined above, except that the warranty period will be ninety (90) days from the date of shipment.

Software Warranty. Seller warrants that Software Materials will generally operate substantially in accordance with Seller's then current specifications for such Software Materials. In the event that Software Materials do not operate substantially in accordance with Seller's current specifications for such Software Materials, Seller will supply a software correction free of charge, if (a) a substantiated warranty claim is made within one (1) year after acceptance; (b) Customer provides Seller with a sufficient description of the problem, and (c) the correction does not involve new Software Materials to serve a function not originally specified. The foregoing warranty shall be void if changes or additions are made to Software Materials by the Customer without Seller's express prior written approval. Failure of Customer to promptly employ any update, upgrade or revision of any Software Material which Seller supplies free of charge will void this warranty and fully release Seller from any and all liability arising out of or related to such failure. Third-party Products, including, but not limited to, Software Materials, will be

warranted only to the extent that they are warranted by their respective manufacturers.

All warranty claims must be made within two (2) weeks after discovery of defect or nonconformity. In no event will any warranty claim be made or honored if made after the expiration of the applicable warranty period. The limited warranties set forth in this Section: (i) are not transferable or assignable; (ii) will not apply unless the Product has been properly installed, maintained and operated in accordance with all instructions and within the limits of rated and normal operating conditions; (iii) do not apply to defects, nonconformities or other failures due to Product misuse or abuse, or other causes outside Seller's control; and (iv) are void if the Customer provides the Seller with incomplete or misleading information.

If, after a reasonable number of repeated efforts, Seller is unable to repair or replace a defective or nonconforming Product, Seller may, in its sole discretion, accept return of the Product (or Part thereof, if such does not substantially impair its value) and return the purchase price paid by the Customer for the Product or Part thereof as Customer's entire and exclusive remedy. Under no circumstances will Seller have any liability whatsoever for loss of use or downtime, lost production, revenue or profits, or for any other indirect, special, incidental or consequential damages, whether such liability is based on contract (including breach of warranty or representation) or tort (including negligence or strict liability) or other legal theory whatsoever, even if Seller had notice of the possibility of such damages and even if any warranty or remedy or this Agreement is held to have failed its essential purpose.

THE WARRANTIES SET FORTH IN THIS SECTION, AND ANY SUCH ADDITIONAL WARRANTY OR REPRESENTATION TO THE EXTENT AGREED TO IN WRITING BY SELLER, ARE IN LIEU OF, AND SELLER EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

In the event that the foregoing disclaimer of additional warranties is not given full force and effect, any resulting additional warranty shall be limited in duration to the express warranties and be otherwise subject to and limited by this Agreement. In the event the Limited Warranty is voided as a result of Customer's acts or omissions, Customer shall reimburse Seller for reasonable costs Seller incurred in connection with the voided Limited Warranty.

- 13. No Uptime Warranties.** To the limited extent an uptime warranty is expressly agreed to by Seller in writing, Customer agrees that Seller shall not be responsible for downtime attributable to or caused by: nonproductive hours (weekends, holidays or off-shifts, etc.); normal or preventive maintenance; tooling application changes or tool breakage; set-up; operator absence; unavailability of programs, tools or fixtures; improper use, programming, maintenance or operation; user's improper fault diagnosis or repair; searching for non-demonstrable (non-repeatable) faults; Force Majeure event or disruption of utilities or other support, such as, air supply, central coolant and the like.
- 14. Acceptance.** Unless Customer has notified Seller of Customer's decision not to accept a Product, each Product



shall be deemed accepted upon the earliest of: (a) the first commercial use of the Product by Customer or (b) ten (10) days after completion delivery and installation of the Product by Seller (to the extent that installation is required under any applicable Proposal). Machine acceptance tests or part runoff tests will limit acceptance of Products and/or require Seller's resources only where Seller expressly agrees to such tests in writing, signed by an authorized representative of Seller. Customer, at its expense, will furnish parts (work pieces) in sufficient quantity and quality to meet the requirements of any such agreed-upon tests or runoff. Seller is not responsible for (1) late or unsuccessful tests due to Customer's failure to supply such work pieces, or (2) damaged or scrapped work pieces. Unless, and to the limited extent expressly agreed to in writing by Seller, any acceptance, runoff or other performance criteria shall not be deemed to be warranties.

- 15. Production Estimates.** Estimates provided by Seller of uptime, cycle time or other Product capability statements, if any, shall not be deemed to constitute production warranties or guarantees of any kind. Seller does not make production warranties or guarantees. Production estimates, if any, are estimates only, and are based on Customer's prints, specifications or other Customer information available at time of the applicable Proposal. The actual production capability of a Product is entirely dependent upon production and other conditions in Customer's plant, that are beyond Seller's reasonable control.
- 16. Machine Foundations.** Standard foundation drawings, if supplied by Seller, may include plan and elevation views. Due to variations in soil type, adjacent equipment, third-party workmanship, or other circumstances outside of Seller's control, the foundation is not warranted by Seller and Seller will not be responsible for any Product inaccuracy or failure resulting from an inadequate foundation, or for any subsurface or other latent conditions including, but not limited to, toxic or hazardous waste or substances, rock formations, and all other similar conditions. Customer shall reimburse Seller for all costs associated with any investigation and determination of the failure or non-compliance of the foundation, if Seller agrees, in its sole discretion, to perform such investigation and determination.
- 17. Ownership of Intellectual Property.** Seller retains all right, title and interest in and to all of Seller's inventions, discoveries, developments, concepts and ideas embodied in its Products, related documentation and other technical data, delivered or disclosed to Customer verbally or in drawings, written or printed matter, electronic storage media, or other form whatsoever ("Developments"). The Products created and prepared by Seller, shall not be treated as Work Made for Hire, as that term is defined by the Copyright Act (17 U.S.C.A. Section 101). Customer agrees and acknowledges that any Software Materials (including, without limitation, system or cell manager software) will be licensed pursuant to the terms and conditions of Seller's standard Software License Agreement in effect on the order date, and acknowledges that Seller is under no obligation to deliver any such Software Materials to Customer before receiving a duly-executed copy of such Software License Agreement. Except as expressly licensed under the Software License

Agreement, Seller shall retain any and all rights to Software Materials, and any related manuals and other documentation supplied by Seller. Customer will be granted a limited, non-exclusive, non-transferable, non-assignable and non-sublicensable license to use the Software Materials only with the Product with which the Software Materials are furnished. Customer shall not remove, modify, or destroy any proprietary markings of Seller, including, but not limited to, legends and notice of Seller's ownership and title to trademarks, trade names, trade secrets, copyrights, or patents placed upon or contained within the Software Materials, and Customer shall reproduce all such markings upon or within authorized copies of the Software Materials. Customer shall take no action that jeopardizes or diminishes the value of any of Seller's Intellectual Property Rights. Customer shall not use any trademark or service mark of any Seller without the prior written consent of the Seller. Any permitted use of Seller's Intellectual Property Rights by Customer shall be done with strict adherence to the most recent written guidelines provided by Seller and is subject to Seller's prior written approval in each instance.

- 18. Confidential Information.** Confidential Information may be used or disclosed by Customer only as provided herein. Customer, on behalf of itself and its employees and agents, agrees that, during the period of its business relationship with any Seller and for a period of two (2) years thereafter Customer shall not at any time disclose to any person, or use for its own benefit or the benefit of any third party, any Confidential Information without the prior written consent of the Seller. Notwithstanding the foregoing, Customer may disclose Confidential Information to one or more third parties if it is required to do so pursuant to law, court order or other directive of a legislative body in which case Customer shall immediately notify Seller of its intention to disclose such Confidential Information. Customer shall disclose such Confidential Information only to those employees of Customer who: (i) have a need-to-know such Confidential Information in the performance of their duties associated with business relationship between Customer and Seller and (ii) are advised by Customer of the confidential nature of such information and are bound by Customer to maintain such in confidence. Customer shall maintain at least the same degree of diligence in the protection of the Confidential Information as it uses with regard to its own proprietary information. All Confidential Information is provided "AS IS", without warranty or guarantee of any kind as to its accuracy, completeness, operability, fitness for particular purpose, or any other warranty, express or implied. Seller shall not be liable to Customer for any damages, loss, expense, or claim of loss arising from use of or reliance on the Confidential Information. For purposes of clarification, Customer shall keep confidential and not disclose, reproduce, excerpt or distribute any portion thereof of Software Materials, Developments and other proprietary information of Seller, including but not limited to all information located on Seller paper or letterhead. Each Seller shall retain ownership of all rights, including all Intellectual Property Rights, in its Confidential Information. No other right, immunity or license to the Confidential Information, express or implied, is granted by Seller to the Customer pursuant to this Agreement under any patent, patent application, copyright, trademark or other Intellectual Property Right, now or hereafter owned or



controlled by Seller. The limitations on the use and disclosure of Confidential Information set forth in this Agreement shall continue for a period of two (2) years after the expiration or termination of this Agreement; provided, however, that any Confidential Information that constitutes a trade secret under applicable law shall be subject to the limitations on the use and disclosure of such information hereunder for as long as such Confidential Information constitutes a trade secret under applicable law. Upon the expiration or termination of this Agreement, Customer shall promptly return or destroy all Confidential Information that Customer received from Seller, in whatever form, without retaining any copies or excerpts thereof. Seller reserves all Intellectual Property Rights to standard assemblies. Seller agrees that Customer may use drawings or documentation provided with machine services manuals for maintenance purposes, but may not use them for manufacturing purposes.

All information submitted to Seller by Customer shall be deemed to be submitted on a non-confidential basis unless agreed otherwise in writing.

- 19. Services.** Seller may provide services to Customer from time to time, including, without limitation, simultaneous engineering or other technical, managerial or engineering services. The parties anticipate that the terms and conditions related to such services will be governed by a separate written agreement signed by the parties. Seller retains all right, title and interest in and to the design and any Intellectual Property Rights resulting from any services provided to Customer, unless and to the limited extent expressly agreed to in writing by Seller, signed by an authorized representative of Seller.
- 20. Intellectual Property Infringement.** Customer shall provide Seller with prompt written notice and copies of any and all demands, process and pleadings alleging that any Product or Part, or use of either of the foregoing, infringes on the Intellectual Property Rights of another entity. If any Product, in the condition received from Seller, infringes the Intellectual Property Rights of a third party (other than a claim covering a process or the product thereof), Seller may, at its option (i) procure for Customer the right to use the Product; or (ii) modify or replace the Product so as to avoid infringement. In the event that (i) or (ii) does not cure the infringement, Seller may accept return of the Product and reimburse Customer for the unamortized portion of the purchase price assuming straight-line amortization over a ten (10) year period and any transportation expenses incurred. Seller will defend Customer against infringement claim and pay any damages and costs and expenses awarded against or incurred by Customer. Customer shall give Seller prompt written notice and copies of all demands, process and pleadings and Customer shall reasonably cooperate in giving Seller authority, control, information and assistance at Seller's expense for such defense or any settlement. This Section states Seller's entire liability with respect to any infringement of Intellectual Property Rights. Customer hereby releases and shall defend and indemnify Seller from liability arising from Product designs that are manufactured, implemented or integrated by Customer or third parties. To the extent that any Product is supplied according to Customer's design, specifications or instructions, Customer agrees to defend and indemnify

Seller for any claim that such Product infringes the Intellectual Property Rights of another entity.

- 21. Term.** Unless terminated sooner in accordance its terms, this Agreement shall remain in full force and effect until the later of (a) three years from the Effective Date or (b) the termination of the business relationship between Seller and Customer following the delivery of all Products ordered by Customer.
- 22. Termination.** This Agreement may be terminated at any time, and for any reason, by Seller, upon notice to Customer; provided, however, that upon termination of this Agreement by Seller, any payments for Products that have not been delivered within ninety (90) days of the date of termination shall be returned to Customer less any expenses incurred by Seller prior to termination as a result of the acts or omissions of Customer.
- 23. Changes to Orders; Termination of Orders.** Upon termination of any order by mutual agreement of Seller and Customer, Seller will be compensated as follows:
- (a) Any work that can be completed within thirty (30) days from notification of termination will be completed and shipped by Seller and be paid for in full by Customer.
 - (b) For work in process and any materials and supplies procured or for which commitments have been made, Customer will pay Seller its actual costs and overhead expenses determined in accordance with generally accepted accounting practice, plus twenty-five percent (25%).
 - (c) For all special tooling or other Products for which commitments have been made by Seller in connection with the order, Customer will pay Seller the full price of such Products and such Products will be provided to Customer.
 - (d) Customer-ordered or caused changes, including work stoppages, that affect price, schedule or Seller's performance, will result in a reasonable adjustment in price and/or time of performance, as determined by Seller. Seller may suspend its performance or perform under the original agreement until mutual agreement is reached on such adjustment.
 - (e) No Products may be returned to Seller without prior written permission from Seller. Upon approved return, Customer shall pay shipping charges and a restocking charge of twenty-five percent (25%) of the Product's list price as of the date of restocking, and Customer shall bear the risk of loss or damage in transit.
- 24. Occupational Safety and Health.** It is Customer's or the user's responsibility to install and use any Product in a safe manner in its facility and to provide all proper dies, devices, tools and means that may be necessary to protect all personnel from bodily injury that may result from Customer's particular use, operation, set-up or service of Seller's Product. Customer is advised to consult the operator, machine and programming manuals, ANSI Safety Standards and state and federal OSHA regulations. CUSTOMER SHALL INSTALL AND USE THE PRODUCTS AT ALL TIMES IN COMPLIANCE WITH THE FOREGOING MANUALS, SAFETY STANDARDS, APPLICABLE CODES, ORDINANCES, REGULATIONS AND LAWS AND GENERAL STANDARDS OF CARE.



- 25. Indemnification.** Customer hereby releases and agrees to defend, indemnify and hold Seller harmless from and against all claims, demands, suits and causes of action ("liability") for property damage, personal injury or death, and other all loss, cost, damage and expense (including reasonable attorneys' fees) incurred by Seller as a result of:
- (a) Customer's modification to, or change of the Product or the failure to purchase, install, provide or implement any Part (including, but not limited to, mechanical, electrical or software interlock or other safety device) or Software Materials offered to Customer or existing in a Product as originally delivered;
 - (b) Products designed by Seller under any simultaneous engineering order that is manufactured by Customer or third parties on Customer's behalf;
 - (c) Customer's breach of its obligations under this Agreement;
 - (d) Customer's use of the Products; or
 - (e) Any of Customer's other acts or omissions.
- 26. Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER'S ENTIRE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID TO SELLER BY CUSTOMER FOR ANY PRODUCT OR PART UPON WHICH ANY CLAIM IS BASED. SELLER AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY LOSS OF USE OR DOWNTIME OR LOST PRODUCTION, REVENUE OR PROFIT, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES WITH RESPECT TO THE PURCHASE, SALE, USE OR NON-USE OF PRODUCTS, WHETHER SUCH LIABILITY IS BASED UPON CONTRACT (INCLUDING BREACH OF A REPRESENTATION OR WARRANTY), TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHER LEGAL THEORY WHATSOEVER, EVEN IF SELLER HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY WARRANTY OR REMEDY IS HELD TO HAVE FAILED ITS ESSENTIAL PURPOSE.
- 27. Government Restrictions.** Seller's performance under this Agreement is subject to the issuance of any required export license or other necessary government authorization. Seller may cancel or terminate any Proposal and any Customer order, without liability, if Seller determines such sale, export or delivery under such Proposal or order would violate applicable law. Termination will not affect the right of Seller to recover the contract price for any goods delivered to Customer by Seller prior to such termination. Customer shall not export or re-export any Product in violation of applicable law. Customer understands and agrees to comply with all applicable laws and regulations and confirms that the Products will not be imported, exported, or re-exported for any chemical/biological weapon, missile/rocket system, or nuclear uses, to persons who commit, threaten to commit or support terrorism or to entities or users on denial or prohibited end-user lists. Customer shall use all Products in accordance with current governmental user safety laws, including, but not limited to, safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination of such Products. Customer hereby certifies that all Products used by Customer or its affiliates in the United States of America will be used in compliance with the Fair Labor Standards Act of 1938, as amended (29 US. Code 201-219). Customer will indemnify Seller against and hold Seller harmless from any liability claims, demands, or expenses (including attorney's fees and other professional fees, settlements and judgments) relating to Customer's noncompliance with this Section and shall provide any additional certification reasonably required by Seller to comply with applicable law.
- 28. Force Majeure.** Seller shall not be liable to Customer for any delay in a scheduled delivery or a failure in performance caused by acts beyond Seller's control, including, without limitation, improper or incomplete specifications resulting from improper or incomplete information received from Customer, acts of God, war, terrorism, vandalism, sabotage, accidents, fires, floods, strikes, labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts or equipment, material, labor or transportation, acts of subcontractors, interruption of utility services, any act or failure to act by any unit of government or governmental agency, or any similar or dissimilar cause (each, a "Force Majeure" event).
- 29. Waiver.** Seller shall have the benefit of all rights and remedies provided by law or equity. Failure of Seller to exercise or reserve any right or remedy, or term or condition of any contract, including this Agreement, shall not be construed as a waiver or relinquishment of any of the other right, remedy, term or condition of any contract or the future performance or exercise of any such term, condition, right or remedy.
- 30. Severability.** If any provision of this Agreement is deemed invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions (or part thereof) shall remain in full force and effect.
- 31. Amendment.** This Agreement shall not be amended, modified or discharged in any manner and no waiver hereunder shall be valid or binding unless set forth in a writing duly executed by the Seller and Customer. No modification of any term or condition of this Agreement will be valid or binding upon the parties unless approved by each party in writing by such party's duly authorized personnel.
- 32. Governing Law.** This Agreement, and all claims that refer or relate to it, will be governed and construed in accordance with the laws of the State of Wisconsin, without regard to its conflict or choice of law principles The United Nations Commission on International Trade Law shall not apply to the sale of goods and services under this Agreement.
- 33. Compliance with Laws.** Customer agrees to maintain policies and procedures to ensure compliance with the laws and regulations applicable to the Products and to



discipline employees as would be appropriate for violations of such laws and regulations.

- 34. Dispute Resolution.** Except as provided below, any and all claims or disputes arising out of the purchase, sale, license, use or nonuse of Products or the rendering or provision of services, the Proposal, Customer's purchase order, or the application, validity, interpretation or breach of this Agreement, will be determined and settled solely and exclusively by arbitration. Seller and Customer agree that if any controversy or dispute arises out of or relates to this Agreement or any breach of this Agreement, they will attempt in good faith to settle the dispute through direct negotiation within thirty (30) days of written notice of the dispute. If the dispute is not settled through direct negotiation, then the matter shall be settled by binding arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, to be conducted in Milwaukee, Wisconsin. Any award rendered as a result of arbitration shall be enforced in any Wisconsin court having jurisdiction, and the Party against whom enforcement is sought, by virtue of this Agreement, consents to entry of judgment for such enforcement. Any request for arbitration must be filed in writing within one (1) year after the act, omission, or alleged breach that gave rise to the claim or dispute; otherwise, the right to any remedy will be deemed forever waived. This agreement to arbitrate will be specifically enforceable under the prevailing arbitration law. Any award or decision rendered by the arbitrator will be final and conclusive and the arbitrator's award may be entered in any court having jurisdiction. The arbitrator will not have the authority or power to amend or modify this Agreement, nor to fashion any relief or remedy that would have the effect of modifying or amending this Agreement or of creating additional rights or obligations. The arbitrator will have no power or authority to award punitive or exemplary damages.

Seller may seek injunctive relief from a court to prevent the unauthorized use or transfer of proprietary Products or Confidential Information including, but not limited to: Software Materials. Customer will reimburse Seller for Seller's attorneys' fees, legal costs and all other expenses related to Seller's reasonable actions taken to enforce Seller's rights under this Agreement.

- 35. Notice.** All notices permitted or required under this Agreement shall be in writing and shall be by a reputable national overnight delivery service or by certified or registered mail, return receipt requested, and shall be deemed given when received. Notices to Customer shall be sent to Customer's address set forth on Customer's Purchase Order. Notices to Seller shall be sent to the addresses set forth below:

Notices to Seller:

FIVES MACHINING SYSTEMS, INC.
Address as set forth on Customer's Purchase Order

With a copy to:

FIVES MACHINING SYSTEMS, INC.
Attention: General Counsel
142 Doty Street
Fond du Lac, WI 54935 USA

Each party may change its address for notices hereunder by notifying the other party of the new address pursuant to this notice provision.

- 36. Independent Contractors.** The parties agree that Seller's relationship with Customer is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture, or employment relationship.
- 37. English Language.** The parties have required that this Agreement and all documents related to this Agreement be drawn up in English. For Customers resident in Québec, France and other francophone jurisdictions: Les parties ont demandé expressément que la présente entente et tous les documents et avis connexes soient rédigés en anglais.
- 38. Assignment.** Customer may not assign, voluntarily, by operation of law or otherwise, any of its rights or delegate any of its duties or obligations under this Agreement without Seller's prior written consent. Any attempt to do so without that consent will be void. Seller may assign this Agreement to any Seller entity or to the purchaser of substantially all of the assets or equity of Seller.
- 39. Survival.** The terms and provisions of this Agreement, which by their sense and content are intended to survive the termination or expiration of this Agreement by any party hereto shall so survive the completion of termination or expiration of this Agreement.
- 40. Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.