

General Conditions

Additional Charges has the meaning set out in clause 7.

Affiliate means in reference to a corporation another corporation which controls it, is controlled by it, or is under common control with it.

Anti-Corruption Laws means laws which are designed to stop the potential corruption of public officials of any country in which any aspect of this Agreement will take place, and includes the *Corruption of Foreign Public Officials Act* (Canada), the *Foreign Corrupt Practices Act* (US), the *Anti-Terrorism, Crime and Security Act 2001* and the *Bribery Act 2010* (UK), or the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999* (Australia).

Applicable Taxes means any federal goods and services tax, provincial or harmonized sales tax, value-added or like taxes on a consumer of goods and services.

Applicant means the person or entity named as the applicant on the Application for Credit made to REFLEX, and (where the context permits) includes all persons named as guarantors. If there is no Application for Credit, "Applicant" means the person or entity requesting the goods or services from REFLEX or its authorised agent.

Application for Credit means an application for credit form completed by the Applicant and submitted to REFLEX seeking the supply of Goods to the Applicant from REFLEX on credit.

Associated Person means any owner (including any principal, shareholder or person having a direct or indirect financial interest), officer, director, partner, principal, employee, agent or any other person, directly or indirectly, controlling, controlled by, or under common control with a party.

Bank means any bank which REFLEX may from time to time bank with.

Claims includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, order, settlement sum, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving REFLEX, the Applicant, any guarantors or a third party.

Consequential Loss means any one or more of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the preceding types of loss arising from an interruption to a business or activity.

Contract means a contract between REFLEX and the Applicant for the supply, hire or sale of Goods, formed on the acceptance by REFLEX of the Applicant's Order.

Credit Facility means a credit facility provided by REFLEX to the Applicant permitting the Applicant to pay amounts due to REFLEX for the Goods after the Goods have been Delivered.

Delivery (or Delivered (as the case may be)) means delivery of the Goods in accordance with clause 8.6.

Delivery Point means the location identified in clause 8.6.

Dispute has the meaning set out in clause 17.1.

Dispute Notice has the meaning set out in clause 17.2.

Goods means any item of whatsoever nature which is supplied, sold or hired by REFLEX and unless the context otherwise requires, also includes services of whatsoever nature which are provided by REFLEX.

Intellectual Property means all rights in any knowledge of secret processes, technical know-how, techniques, discoveries, inventions, ideas, research, engineering and manufacturing methods, practices, systems, formulae, drawings, designs, specifications, manuals, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to the Goods, the supply, hire or sale of the Goods or REFLEX's business.

Mediation Notice has the meaning set out in clause 17.4.

Order means a written offer by the Applicant to purchase, hire or receive Goods from REFLEX in its standard form.

Other Agreements means any additional applicable agreements between the Applicant and REFLEX relating to the supply, hire or sale of Goods, including those stated in clause 2.

Other Services has the meaning set out in clause 15.1.

Personal Information has the meaning attributed to it under Privacy Law.

Personnel means in relation to a Party, any Affiliate, employee, officer, agent, contractor or professional adviser of that Party.

PPSA means the *Personal Property Security Act* (Ontario) as amended, and where the Goods are located or used in a Province of Canada other than Ontario, PPSA includes, where determined by REFLEX in its sole discretion, the analogous personal property security law of that Province.

PPS Law means the PPSA together with any subsidiary legislation or regulations made under the PPSA, any amendment to other legislation made as a consequence of the PPSA and any amendment to a PPS Law from time to time.

PPS Register means the register or registration system established under the PPS Law.

Privacy Law means the *Personal Information Protection and Electronic Documents Act* (Canada) and any other applicable laws relating to preservation of privacy of personal information.

REFLEX means Reflex Instrument North America Limited and includes any Affiliates, and Associated Persons.

Security Interest has the same meaning as under the PPS Law.

1. Application

1.1 These terms and conditions will apply where REFLEX sells, rents or supplies Goods to an Applicant or other person at the direction of the Applicant and will (unless agreed otherwise between the parties) form part of any Contract or Other Agreement.

1.2 REFLEX may amend these terms and conditions from time to time by giving the Applicant notice in writing of the amendments at least 1 month prior to the amendments taking effect.

1.3 Any terms or conditions put forward by an Applicant in respect of a request or order for the supply, Order, purchase or hire of Goods (whether in a purchase order or otherwise), will not be binding on REFLEX so far as they differ from or purport to amend, annul or vary any of these terms and conditions, unless specifically agreed to by REFLEX in writing.

1.4 To the extent to which the terms of any request by or on behalf of an Applicant for the supply of Goods (whether in a purchase order or otherwise) by REFLEX to the Applicant differ from these terms and conditions, the acceptance by REFLEX of the request to supply Goods will be deemed to be an offer to supply only on these terms and conditions (unless REFLEX has expressly agreed in writing to such different terms) and acceptance of the Goods by the Applicant will constitute acceptance of the Goods on these terms and conditions. For the avoidance of doubt, the mere delivery of Goods or Services by REFLEX pursuant to a request to supply them on differing terms is not acceptance by REFLEX of such differing terms and to the extent that the terms of any request for the supply of Goods by or on behalf of an Applicant differ from these terms and conditions, these terms and conditions will prevail.

1.5 If the Applicant does not wish to purchase, hire or receive Goods on the terms and conditions set out in this document (and any applicable Other Agreement), as amended from time to time, the Applicant must notify REFLEX within 48 hours of notification of the amendment, otherwise the Applicant will be deemed to have accepted to purchase, hire or receive the Goods on the terms and conditions of this document (and any applicable Other Agreement), as amended.

2. Other Agreements

2.1 Where REFLEX agrees to provide Goods on consignment to the Applicant, the supply of Goods will also be subject to a separate Storage and Stock Control Agreement between REFLEX and the Applicant.

2.2 Where REFLEX agrees to rent Goods to the Applicant, the rental of Goods will also be subject to a separate Master Rental Agreement or Master Customer Agreement between REFLEX and the Applicant.

2.3 Where REFLEX agrees to supply Goods to an Applicant who is a party to a Distribution Agreement with REFLEX (or to a third party at the direction of, or via arrangement by, such Applicant), the supply of Goods will also be subject to the separate Distribution Agreement between REFLEX and the Applicant unless the context requires otherwise.

2.4 When required by REFLEX, a separate Guarantee and Indemnity form will be provided to the Applicant. The Applicant agrees that the execution and return of this Guarantee and Indemnity form is a condition of REFLEX supplying Goods to the Applicant or continuing to

- grant credit and should the Applicant fail to promptly return the Guarantee and Indemnity form duly executed, REFLEX reserves the right to withdraw any credit facility granted to the Applicant and/or cease selling, hiring or supplying Goods to the Applicant.
- 2.5 Unless the parties agree otherwise, where a discrepancy arises between any Contract or Other Agreement and these terms and conditions, the parties agree that these terms and conditions will prevail (unless these terms and conditions are less favourable to REFLEX, in its discretion, in which case the applicable Contract or Other Agreement prevails).
3. **Quotation**
- Any quotation issued by REFLEX is not an offer to sell, hire or supply or provide any Goods and may be withdrawn or varied at any time prior to a related Order being accepted by REFLEX in accordance with clause 4. A quotation will only be valid for 30 days from its date of issue unless extended in writing by REFLEX or earlier withdrawn. All prices quoted by REFLEX relate to the sale, hire or supply of Goods on these terms and conditions.
4. **Acceptance of Orders**
- The Applicant may request REFLEX to sell, hire or supply Goods to the Applicant in accordance with these terms and conditions by providing an Order to REFLEX. REFLEX may accept or reject an Order in whole or in part in its absolute discretion and will notify the Applicant if the Order or part of the Order is not accepted. The provision of Goods by REFLEX to the Applicant is evidence of acceptance of the Order. The acceptance of an Order will not be or imply acceptance of any terms or conditions in the Order which are inconsistent with these terms and conditions or, if the Applicant has a Credit Facility or Other Agreement with REFLEX, which are inconsistent with the terms of the Credit Facility or Other Agreement.
5. **Payment**
- 5.1 The Applicant must make all payments to REFLEX free from any deductions, abatement, reduction, set-off, defence, counter-claim or recoupment claim of any kind whatsoever.
- 5.2 REFLEX will submit to the Applicant an invoice for sale and/or rental of the Goods or any part thereof Delivered or to be Delivered to the Applicant and the full amount of each invoice together with any additional charges, costs and expenses (if any) will be paid by the Applicant to REFLEX by the later of:
- where REFLEX has agreed in writing to extend credit to the Applicant, the date for payment as specified by the agreed credit terms notified in writing by REFLEX to the Applicant;
 - the date for payment as specified in the invoice;
 - 7 days from the date of Delivery; and
 - such other date as agreed between the parties in writing.
- 5.3 REFLEX reserves the right to issue an invoice for partial Deliveries and Deliveries delayed at the request of the Applicant.
- 5.4 If the Applicant makes a payment to REFLEX at any time, whether in connection with a Contract, Other Agreement or otherwise, REFLEX may apply the payment to any part of the amounts owed by the Applicant to REFLEX as REFLEX sees fit.
- 5.5 REFLEX may, in its absolute discretion, offset any amount due from REFLEX to the Applicant against any amount due from the Applicant to REFLEX, or which will in the future be due from the Applicant to REFLEX, whether in connection with a Contract, Other Agreement or otherwise.
- 5.6 Where REFLEX agrees to extend credit to the Applicant, the Applicant must make payments when so required to ensure the total amount outstanding from time to time remains within the credit limit determined by REFLEX.
6. **Credit Facility**
- 6.1 REFLEX may in its absolute discretion grant a Credit Facility to the Applicant. No Credit Facility is granted until the Applicant is notified in writing by REFLEX.
- 6.2 REFLEX may in its absolute discretion and at any time without notice to the Applicant:
- withdraw any Credit Facility granted to the Applicant; or
 - increase or decrease the limit (if any) of any Credit Facility granted to the Applicant; and
 - to the extent lawfully permitted or subject to legal requirements, change the other terms of Credit Facility.
- 6.3 The Applicant acknowledges and agrees that the Credit Facility applied for cannot be used for and does not extend to any transaction which is or may be regulated under the *Consumer Credit Protection Act* (Ontario) and where the Applicant is resident in a Province of Canada other than Ontario, this clause is deemed to include, where determined by REFLEX in its sole discretion, the analogous consumer protection law of that Province.
- 6.4 The Applicant irrevocably authorises REFLEX and will assist it to obtain credit information about its personal, consumer and commercial credit worthiness from any bank or credit agency for the purpose of determining whether to grant or withdraw a Credit Facility to the Applicant.
7. **Additional Charges**
- In addition to the price of the Goods, REFLEX may, without limitation, charge the Applicant with any of the following (**Additional Charges**):
- Applicable Taxes (including any stamp duty or other statutory charges, or levies payable in relation to or in connection with the sale, rental or supply of Goods);
 - legal costs (solicitor and own client costs) and disbursements incurred by REFLEX in relation to any alleged or actual breach of these terms and conditions and/or any Contract or Other Agreement by the Applicant;
 - costs and disbursements (including legal costs) incurred by REFLEX in enforcing any Security Interest;
 - debt collection costs and enforcement costs;
 - if REFLEX agrees to Deliver the Goods to the Applicant other than on an ex works basis, all freight and other transport costs associated with the Delivery of the Goods, provided REFLEX has notified the Applicant in writing before Delivery is effected; and
 - all costs or charges, including administrative costs or charges, incurred by REFLEX or its agents with respect to the recovery or return of Goods from the Applicant whether or not such return of Goods occurs in relation to any breach of any Contract, Other Agreement or these terms and conditions.
8. **Delivery**
- 8.1 The time within which REFLEX may advise the Applicant that it will make Delivery of the Goods will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays caused by or contributed to by weather, industrial action, manufacturers or suppliers, fire or any other cause beyond the control of REFLEX and no responsibility, liability or Claim will be accepted by REFLEX for the consequences of any such delay(s).
- 8.2 If, as a result of cause beyond REFLEX's reasonable control, REFLEX determines that it will not be able to deliver all or part of the Goods within a reasonable timeframe, REFLEX may terminate the relevant Contract or Other Agreement. On such termination, both parties release each other from any Claims in relation to the Contract or Other Agreement and in respect of the termination, excluding for any amounts properly due to REFLEX prior to the termination.
- 8.3 REFLEX may effect Delivery of the Goods the subject of a Contract or Other Agreement as a whole or in separate parts.
- 8.4 If the Applicant requests REFLEX to delay Delivery of any or all of the Goods, REFLEX may, in its absolute discretion, agree to store the Goods, with such storage to be at the Applicant's expense.
- 8.5 The Applicant acknowledges and agrees that REFLEX will not be liable for, and the Applicant releases REFLEX from any liability in respect of, any loss, Claim, damage or expense that the Applicant may suffer or incur arising out of or contributed to by any delays in obtaining or failure to obtain the Goods.
- 8.6 Where applicable, REFLEX will deliver the Goods to the Applicant in accordance with the applicable Contract or Other Agreement or, if not specified or otherwise agreed by REFLEX in writing, by delivering the Goods ex works (as that term is defined in the Incoterms 2010) or such other location within Australia as nominated by REFLEX acting reasonably (**Delivery Point**).
- 8.7 If the Delivery Point is REFLEX's premises, the Applicant must remove the Goods from the Delivery Point within 14 days of the date of Delivery failing which charges and termination may apply.
9. **Ownership of the Goods and Intellectual Property Rights**
- 9.1 REFLEX retains title to the Goods notwithstanding: (i) delivery of the Goods to Applicant; (ii) possession and use of the Goods by Applicant; and (iii) any temporary attachment of the Goods to any land or buildings to facilitate use of the Goods, subject only to the rights of Applicant as a mere bailee of the Goods with a right only to use them in accordance with, and under, the Agreement.
- 9.2 REFLEX retains exclusive title and ownership of all Intellectual Property Rights in relation to the Goods. The Agreement does not grant any Intellectual Property Rights in the Goods or any express or implied licence to the Intellectual Property Rights in the Goods. All rights, titles and interests (including all intellectual Property Rights) in and to Improvements to the Goods created, conceived, developed or otherwise acquired in connection with this Agreement will belong to REFLEX and are hereby irrevocably assigned (and for greater certainty this includes future Improvements, which will, from time to time as they arise be deemed to have been assigned without further consideration by this written instrument) to REFLEX. All moral rights in and to such Improvements are hereby irrevocably waived by Applicant.

10. Inspection

- 10.1 The Applicant must inspect the Goods immediately on Delivery.
- 10.2 Subject to clause 11, no Claim for shortages or damages or defective Goods may be made against REFLEX unless written notice of such claim is received by REFLEX within 48 hours after Delivery. Upon such notice REFLEX reserves the right to rectify any shortage or damages or defective Goods at its own expense and within reasonable time after notification by the Applicant.
- 10.3 Subject to clause 11, if the Applicant fails to notify REFLEX in accordance with clause 10.2, the Applicant will be deemed to have accepted that the Goods are not faulty and that the Goods accord with the order and the Applicant indemnifies REFLEX from any claims, damages, expenses or costs resulting from or arising out of the use of the Goods by the Applicant whether or not such Goods are damaged or defective.

11. Warranties and Exclusions

- 11.1 Subject to any warranties which are implied by law and cannot otherwise be excluded or waived by Applicant (which it agrees to do to the extent possible), REFLEX excludes all other warranties, guarantees, terms, conditions or liability in relation to the manufacture, sale, hire, use or supply of the Goods and REFLEX will not be liable for any claim for direct, indirect or Consequential Loss or damage arising out of or contributed to by the manufacture, sale, hire, use or supply of the Goods.
- 11.2 Subject to clause 11.1, to the extent that REFLEX's liability cannot be excluded, REFLEX's liability will be limited to:
- (a) with respect to the supply of Goods, any one or more of the following as determined by REFLEX in its absolute discretion:
 - (i) the cost of replacing the Goods;
 - (ii) the cost of obtaining equivalent goods; or
 - (iii) the cost of having the Goods repaired,
 - (b) with respect to the supply of service, any one or more of the following as determined by REFLEX in its absolute discretion:
 - (i) the resupply of services; or
 - (ii) the cost of having the services resupplied.
- 11.3 The Applicant acknowledges and agrees that it has made its own enquiries as to the suitability of the Goods (or any part of the Goods) for the Applicant's intended use and the Applicant has not relied upon any statement, representation or information provided by or on behalf of REFLEX in respect of the Goods (including the use of the Goods) other than the statements, representations and information set out in writing in the relevant Contract or Other Agreement for the Goods and these terms and conditions and the Applicant accepts that REFLEX is not responsible or liable for the failure of the Goods to perform for the purposes required by the Applicant nor for any loss or damage alleged to have arisen from any malfunction, defect or failure of the Goods. The parties agree that any obligations, duty or liability of REFLEX to Applicant under the *Sale of Goods Act* (Ontario) are hereby expressly waived by Applicant and deemed negated. Where the Applicant is resident in, or buys or receives Goods in, a Province of Canada other than Ontario, the Applicant hereby waives its rights to the extent lawfully permitted under the analogous sale of goods laws of that Province.
- 11.4 The Applicant agrees to promptly take all reasonable steps to mitigate any loss or damage it suffers or incurs.

12. Limitation of Liability

- 12.1 Subject to clause 11 and to the extent permitted by law, REFLEX's total potential liability arising out of or in connection with its performance of its obligations pursuant to any Contract, Other Agreement or these terms and condition or in respect of the sale or supply of the Goods, including without limitation any negligent acts or omissions, is limited as follows:
- (a) REFLEX shall have no liability to the Applicant for any Consequential Loss; and
 - (b) REFLEX's total aggregate liability for any and all loss or damage, however arising, is capped at the aggregate price paid by the Applicant to REFLEX (excluding any Applicable Taxes or other charges not retained by REFLEX) under the Contract or Other Agreement for the specific Goods that gave rise to the loss or damage in question or the amount of CDN \$50,000 whichever is less.
- 12.2 The limitations in clause 12.1 do not apply to the extent that any loss or damage is directly attributable to fraud or wilful misconduct by REFLEX.

13. Release and Indemnity

- 13.1 The Applicant releases and discharges REFLEX from all claims and demands on REFLEX and any loss or damage whatsoever and whenever caused to the Applicant or any other person of any nature or kind and indemnifies and holds REFLEX harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by

REFLEX and from and against all actions, proceedings, claims or demands made against REFLEX, arising in either case as a result of, or which has been contributed to by:

- (a) the Applicant's failure to comply with any laws, rules, standards, or regulations applicable to the Goods or use of the Goods;
- (b) the Applicant's failure to keep any Goods which are the property of REFLEX safe and secure;
- (c) any use of the Goods contrary to any instructions or warnings given by REFLEX or the manufacturer of the Goods;
- (d) any other negligence or any breach of duty by the Applicant;
- (e) any compliance or adherence by REFLEX with any instruction by the Applicant; or
- (f) any reliance by REFLEX on any representation by the Applicant.

- 13.2 The parties agree and acknowledge that, for the purposes of clause 13.1, a reference to the Applicant includes the Applicant's agents, employees, directors, representatives and contractors and any person or party who uses the Goods or claims an interest in the Goods as a result of a transaction with, or otherwise with or without the permission of, the Applicant.

14. Authorization to File Financing Statements

- 14.1 The Applicant hereby irrevocably authorizes REFLEX at any time and from time to time during any period in which any amounts are owed by Applicant to REFLEX, or Applicant is in possession of Goods which have not yet been paid for, to file, in any filing office in any Canadian province where the filing of an initial financing statement is necessary or desirable to perfect the interest of REFLEX in the Products or amounts owing to REFLEX, any initial financing statements and amendments under the applicable PPSA or PPS Laws, that (a) indicate the collateral (i) as being all Products and if requested by REFLEX, (ii) also all current and after-acquired assets of Applicant or words of similar effect, regardless of whether any particular asset comprised in the collateral falls within the scope of the PPS Laws of such jurisdiction, and (b) provide any other information required by such jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Applicant is an organization, the type of organization and any organization identification numbers issued to such person, and, (ii) in the case of a financing statement filed as a fixture filing or indicating collateral as as-extracted collateral, and a sufficient description of real property to which the collateral relates. The Applicant agrees to furnish any such reasonably required information to REFLEX as soon as reasonably practicable upon its request and to otherwise cooperate with the filing. The Applicant also ratifies its authorization for the REFLEX to have filed under PPS Laws any like initial financing statements or amendments thereto if filed prior to the date hereof.

15. Other Services

- 15.1 If REFLEX agrees to provide any other services to the Applicant other than the sale, hire or supply of the Goods, including but not limited to the assembly, disassembly or installation of the Goods, instructing the Applicant, its personnel or any other person in the use or operation of the Goods or operating or supplying an operator for the Goods (**Other Services**):
- (a) REFLEX will provide the Other Services on the terms nominated by REFLEX in its absolute discretion;
 - (b) all costs, expenses and liabilities incurred or to be incurred by REFLEX or associated with providing the Other Services must be paid by the Applicant to REFLEX on demand; and
 - (c) REFLEX will not be liable for any delay or failure to supply the Other Services within any time period nominated or requested by the Applicant.
- 15.2 Without limiting clauses 12 and 13, the Applicant:
- (a) releases and discharges REFLEX from all Claims and demands on REFLEX and any loss or damage whatsoever and whenever caused to the Applicant or any other person of any nature or kind; and
 - (b) indemnifies and holds REFLEX harmless from and against all Claims, liabilities, losses, damages, costs or expenses incurred or suffered by REFLEX and from and against all actions, proceedings, claims or demands made against REFLEX, arising from the provision of the Other Services.

- 15.3 Without limiting any other provision in this clause 15, any employee, agent or contractor of REFLEX supplying or providing Other Services for or on behalf of REFLEX to the Applicant will (unless agreed otherwise between the parties) be deemed, from a liability standpoint, to be an agent of the Applicant for the period in which the person is providing the Other Services.

16. Default by the Applicant

- 16.1 In the event the Applicant:
- (a) breaches or is alleged to have breached these terms and conditions, any Other Agreement or any Contract by reason of

failure to pay any amount owing to REFLEX or any other act or omission;

- (b) threatens or appears likely to become subject to any insolvency, administration or bankruptcy; or
- (c) ceases or threatens to cease conduct of its business in the normal course,

REFLEX may, without prejudice to any other rights, including the right to sue for any shortfall:

- (d) terminate any Contract or Other Agreement between REFLEX and the Applicant;
- (e) cancel any Credit Facility;
- (f) refuse Delivery of Goods except where payment in full has been received by REFLEX prior to Delivery;
- (g) enter any premises where the Goods are located and retake possession of any Goods, the full payment for which has not been received; and
- (h) retain (where applicable) all moneys paid on account of any Goods or otherwise.

16.2 Where the Applicant breaches any term of these terms and conditions, any Other Agreement or any Contract, REFLEX reserves the right of resale in relation to the Goods.

16.3 If the Applicant defaults in paying any invoiced amount or any amount otherwise due and owing from the Applicant to REFLEX:

- (a) unless otherwise agreed in writing by REFLEX, the Applicant must pay interest on the highest debt balance of each calendar month on monies owing by the Applicant to REFLEX calculated daily from the date the amount became payable to the date of payment at an annual rate of interest of 36% and the rate advised by the Bank as the rate charged by the Bank on overdrafts in excess of \$100,000; or interest costs awarded by the courts, whichever is the greater (to a maximum of 60% per annum), and
- (b) any unpaid amount together with interest and any other expenses becomes a debt due by the Applicant to REFLEX and the Applicant must pay REFLEX's costs of any enforcement action, including, but not limited to, any legal costs.

17. Dispute Resolution

17.1 If a dispute arises between the parties in relation to the interpretation of these terms and conditions, a Contract or Other Agreement or the rights of any party under these terms and conditions, a Contract or Other Agreement (**Dispute**), a party must not commence court or arbitration proceedings relating to the Dispute unless that party has participated in the dispute resolution procedures set out in this clause. However, nothing in this clause will prevent a party instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

17.2 A party claiming that a Dispute has arisen must give a written notice specifying the nature of the Dispute (**Dispute Notice**) to each other party.

17.3 As soon as practicable after the giving of a Dispute Notice, the parties must attempt to resolve the Dispute by negotiation.

17.4 If the parties are unable to reach a resolution of the Dispute within 14 days of the giving of the Dispute Notice, any party may, by notice in writing (**Mediation Notice**), refer the matter to mediation through the facilities and National Mediation Rules of the ADR Institute of Ontario by a Chartered Mediator.

17.5 Upon referral, each party will observe the Mediation Rules and will use all reasonable endeavours to settle the Dispute through mediation.

17.6 Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under any applicable Contract, Other Agreement and these terms and conditions.

18. Governing Law

These terms and conditions will be governed and determined in accordance with the laws of the Province of Ontario and the Applicant submits to the non-exclusive jurisdiction of the courts of that Province. The operation of the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded.

19. Applicant as Trustee

Where the Applicant is acting as trustee of a trust the Applicant agrees and warrants:

- (a) that it is the only trustee of the trust and no action has been taken or is proposed to be taken to remove it as trustee of the trust;
- (b) that it will produce to REFLEX a stamped copy of the trust deed (with all amendments) within 2 days of receiving a written request from REFLEX to do so;
- (c) that it has full power and authority for the benefits, purpose and objects of the trust to accept these terms and conditions and to enter into any Contract or Other Agreement on behalf of the trust

and that it shall be bound by these terms and conditions and any Other Agreement or Contract both personally and as trustee;

(d) that the trustee shall be liable for all amounts due to REFLEX pursuant to any Contract, Other Agreement or these terms and conditions and that the assets of the trust shall be available to meet payment of all amounts due to REFLEX pursuant to any Contract, Other Agreement or these terms and conditions; and

(e) no action has been taken or is proposed to be taken to terminate the trust.

20. Amounts Exclude Applicable Taxes

Unless otherwise agreed by REFLEX in writing, all amounts payable in relation to these terms and conditions and any Other Agreement or Contract for Goods and services supplied hereunder are expressed to be exclusive of Applicable Taxes which are the sole responsibility of the Applicant.

21. Assignment

Unless otherwise agreed by REFLEX, REFLEX reserves the right to assign any rights or obligations pursuant to these terms and conditions and any Contract or Other Agreement to any other party on giving the Applicant 14 days' notice in writing to its last known address. The Applicant must not, without REFLEX's prior written consent in its sole discretion, transfer, assign, encumber or otherwise dispose of any of the Applicant's rights or obligations under any Contract, Other Agreement or these terms and conditions.

22. Intellectual Property

22.1 Title, right and interest in the Intellectual Property is and will remain the property of REFLEX.

22.2 In dealing with the Intellectual Property, the Applicant must not:

- (a) disclose or furnish the Intellectual Property to any other person and all reasonable precautions must be taken to protect such confidentiality
- (b) reverse engineer Goods or seek to uncover Intellectual Property;
- (c) copy, distribute, transmit, display, perform, reproduce, publish, licence, modify, rewrite, allow or permit derivative works to be created from, transfer or sell the Intellectual Property; or
- (d) allow copies of the Intellectual Property to be printed, published, made, reproduced or otherwise communicated without acknowledging REFLEX's right, title and interest in the Intellectual Property.

22.3 The Applicant must ensure that the Intellectual Property is not subjected to any treatment which is prejudicial to the reputation of, or which would infringe the rights of REFLEX.

23. Risk and Title

23.1 Risk in the Goods passes to the Applicant immediately upon Delivery and REFLEX will not be responsible for any loss or damage to the Goods occurring after such time and no such loss or damage will affect the obligations of the Applicant to pay any amount relating to the supply of the Goods or otherwise payable by the Applicant to REFLEX in accordance with any Contract, Other Agreement or these terms and conditions.

23.2 The Applicant must insure the Goods at its own expense from the date of Delivery.

23.3 Notwithstanding the passing of risk, the legal and equitable title in any Goods sold by REFLEX will not pass to the Applicant until all amounts whatsoever payable by the Applicant to REFLEX have been paid. This interest of REFLEX in the Goods will continue in the Goods, products of the Goods and any proceeds derived from any of them.

23.4 Title in any Goods rented by REFLEX to the Applicant shall at all times remain with REFLEX.

23.5 Any payment made by or on behalf of the Applicant which is later avoided by the application of any statutory provisions will be deemed not to discharge REFLEX's title in any Goods sold by REFLEX, or the Applicant's indebtedness owed to REFLEX.

23.6 Where Goods are sold by REFLEX to the Applicant without payment of the price and any Additional Charges in full being made prior to Delivery, the Applicant:

- (a) holds the Goods on trust for REFLEX until all amounts owed by the Applicant to REFLEX have been paid in full;
- (b) must keep the Goods in its possession, covered by Applicant's insurance and take good care of them and store them and mark them in a manner that identifies the Goods and clearly shows that they belong to REFLEX; and
- (c) must immediately return the Goods to REFLEX on demand.

23.7 In the event the Applicant fails to return the Goods following the making of a demand, REFLEX or its agents may enter the premises at which the Goods are located and take possession of the Goods. The Applicant agrees to obtain and provide any consent necessary for such

- entry by REFLEX and to indemnify REFLEX or its agents for any liability arising from any entry upon such premises.
- 23.8 Where Goods have been returned or repossessed under clauses 23.6 or 23.7, REFLEX may resell the Goods to another person. REFLEX will not be liable for any loss occasioned thereby nor be liable to the Applicant or any person claiming through the Applicant and REFLEX will be entitled to retain the proceeds of any Goods sold and apply those proceeds towards the indebtedness of the Applicant.
- 23.9 The Applicant acknowledges that if it mixes the Goods with other products or items through manufacturing, processing, assembling or commingling so that the Goods are no longer separately identifiable, any Security Interest shall continue for the purposes of the PPS Law, and that REFLEX will continue, only for the purposes of the PPS Law, to hold a Security Interest in the processed or commingled goods.
- 23.10 The Applicant must not attempt to give or allow any Security Interest, lien, mortgage, claim or similar interest to exist or arise over the Goods in which REFLEX retains title or any proceeds from the sale of those Goods in favour of another person (other than REFLEX).
- 23.11 The terms and conditions of this clause 23 apply notwithstanding any arrangement between the parties under which REFLEX grants the Applicant credit including under any Credit Facility.
24. **PPS Law**
- 24.1 To the extent that a Security Interest arises under any Credit Facility, Contract or Other Agreement or any transaction contemplated by them in favour of REFLEX as the secured party:
- the Applicant acknowledges that the Security Interest will attach to any proceeds or any accessions;
 - the Applicant agrees to REFLEX effecting a registration on the PPS Register (in any manner REFLEX considers appropriate) in relation to any Security Interest and the Applicant agrees to provide all assistance reasonably required to facilitate this (including executing any supplementary document and paying all costs in connection with effecting, maintaining, amending or discharging that registration);
 - the Applicant waives the right to receive any verification statement (or notice of any verification statement) in respect of a registration made on the PPS Register; and
 - the Applicant must not, without first giving REFLEX 14 days' prior written notice, amalgamate, redomicile out of its Province of incorporation, change its name, or any other identifiers which are required to be recorded on the PPS Register in connection with any Security Interest.
- 24.2 The Applicant and REFLEX agree that to the extent do not apply to the enforcement by REFLEX of any Security Interest arising under any Credit Facility, Contract or Other Agreement or the transactions contemplated by them.
25. **Special Obligations for ITAR Items – Country of Use (Where Applicable)**
- 25.1 If an Applicant requests REFLEX to supply Goods which contain military technology or other controlled defence articles under the US International Traffic in Arms Regulations (**ITAR Items**), REFLEX will use reasonable endeavours to ensure the necessary documentation is in place in order for the United States of America Department of State (**US Department of State**) to approve the Applicant and the stated country of use for an export licence in relation to the Goods which contain ITAR Items.
- 25.2 The Applicant acknowledges that the ITAR Items in the Goods are authorized by the U.S. Government for export only to the approved country of destination for use by the approved end-user. The Applicant also acknowledges that the ITAR Items may not be transferred, transhipped on a non-continuous voyage, or otherwise disposed of in any other country, either in its original form or after being incorporated into other end-items, without the prior written approval of the US Department of State.
- 25.3 The Applicant acknowledges and agrees that if the Applicant (or a subsequent end user) wishes to transfer ownership, lease, lend or transport the Goods with the ITAR Items outside of the country approved by the US Department of State, then the Applicant will require a new export license (at its sole expense) prior to such transfer.
- 25.4 The Applicant acknowledges and agrees that end users are prohibited from using Goods with ITAR Items in certain prohibited or embargoed countries as prescribed from time to time by the US Department of State, which may include (without limitation and by way of example) Afghanistan, Belarus, Cuba, Cyprus, Eritrea, Iran, Iraq, Ivory Coast, Lebanon, Sierra Leone, Libya, N. Korea, Syria, Vietnam, Myanmar (formerly Burma), China, Haiti, Liberia, Rwanda, Somalia, Sri Lanka, Sudan, Yemen, Zimbabwe, Venezuela, or Democratic Republic of the Congo (formerly Zaire).
- 25.5 Should the Applicant breach any of the terms and conditions contained in clauses 25.1 to 25.4 then REFLEX may, without limitation to any other right of REFLEX following a breach of these terms and conditions, withhold service, repairs, support, training and/or further supply of the Goods with ITAR Items to the Applicant.
- 25.6 Should the Applicant breach any of the terms and conditions contained in clause 25.4 then the Applicant acknowledges that, in addition to and without limitation of any rights of REFLEX following such a breach, the Applicant may be exposed to civil legal action from the party granted the exclusive use of the Goods with ITAR Items in the relative country.
26. **Privacy Law compliance generally**
- REFLEX agrees to comply with all Privacy Laws in relation to any and all Personal Information that it collects from the Applicant in connection with this agreement.
27. **Applicant's Consent to Transfer of Personal Information**
- 27.1 The Applicant consents, acknowledges and agrees that:
- any Personal Information provided to REFLEX may be, in order for REFLEX to provide the Applicant with its Goods;
 - Personal Information may also be processed by Personnel or by other third parties operating outside Canada; and
 - by submitting Personal Information to REFLEX, the Applicant expressly agrees and consents to the disclosure, transfer, storing or processing of any Applicant Personal Information outside of Canada in the manner permitted by clause 27.1(a) and 27.1(b).
- 27.2 In providing this consent, the Applicant understands and acknowledges that countries outside Canada may not have any privacy protection obligations in relation to Personal Information.
28. **Privacy Protection Obligations**
- 28.1 Privacy Law requires REFLEX to take such steps as are reasonable in the circumstances to ensure that any recipients of Personal Information do not breach the privacy principles contained within Privacy Law.
29. **Consent**
- By agreeing to these terms and conditions, the Applicant acknowledges that it consents to the handling of its Personal Information in accordance with REFLEX's Privacy Policy.
30. **Language**
- The parties have expressly requested and required that this Agreement and all other related documents be drawn up in the English language. Les parties conviennent et exigent expressément que ce Contrat et tous les documents qui s'y rapportent soient rédigés en anglais.