

**STANDARD TERMS AND CONDITIONS**  
**APPLICABLE TO ONLINE SALES IN THE USA**

**Casella CEL, Inc.**

13 Pratts Junction Road,  
Sterling,  
Massachusetts,  
01564-2305, USA

**Phone:** 800 366 2966

**Website:** [www.casellasolutions.com](http://www.casellasolutions.com)

**Ordering Information:**

For best results in sending an order to Casella CEL,  
Inc.:

- 1) Email the order to [info-us@casellasolutions.com](mailto:info-us@casellasolutions.com)
- 2) Mail the order into the above address
- 3) Call the order into the above address

**For service on your order:**

Call 800366 2966.

Our customer service coordinators are available from Monday – Friday 8:30 a.m. – 4:30 p.m.

A subsidiary of IDEAL INDUSTRIES INC.

## 1 INTERPRETATION

### 1.1 In these Conditions:

**“Buyer”** means the person or entity that purchases Products from the Seller subject to these Conditions;

**“Conditions”** means the terms and conditions of sale herein, which may be amended by Seller from time to time by reasonable notice, including without limitation by posting the revised Conditions on its website at <https://www.casellasolutions.com/us/en.html>, which shall be binding upon Buyer;

**“Contract”** means an agreement between the Seller and the Buyer for the sale and purchase of the Products subject to these Conditions, whereby Seller has accepted Buyer’s purchase order buy written acknowledgment, or as otherwise set forth in these Conditions;

**“Dispatch Date”** means the date of completion of delivery in accordance with condition 5.1 below;

**“Shipment Address”** means the Seller’s principal place of business;

**“Estimated Dispatch Date”** means any estimated dispatch date for Products indicated by the Seller to the Buyer;

**“Incoterms”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when a Contract is made;

**“Intellectual Property Rights”** means all intellectual property rights of any kind existing anywhere in the world whether or not registered and all applications, renewals and extensions of the same including, without limitation, copyright, database rights, design rights, patents, trademarks, service marks, trade names and other rights in goodwill, rights in know-how, trade secrets and other confidential Information;

**“Products”** means the goods which the Seller is to supply to the Buyer in accordance with these Conditions; and

**“Seller”** means Casella CEL, Inc. whose principal place of business is at 13 Pratts Junction Roadm Sterling, Massachusetts, 01564-2305, USA.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.

## 2 BASIS OF SALE

- 2.1 These Conditions apply to all Contracts to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under document, including without limitation, any purchase order, specification or other document).
- 2.2 Each order or acceptance of a quotation for Products by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Products subject to these Conditions.
- 2.3 No variation to these Conditions shall be binding unless made in writing and signed on behalf of both the Buyer and the Seller specifying:
  - 2.3.1 which condition is to be varied; and
  - 2.3.2 full details of such variation.
- 2.4 No order placed by the Buyer shall be deemed to be accepted by the Seller until Seller issues a written acknowledgement to Buyer or (if earlier) the Seller delivers the Products to the Shipment Address.
- 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Seller in writing. In entering into a Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.8 All Products delivered hereunder shall be deemed accepted by Buyer (without waiving any rights under the warranty provided in Section 9) as conforming to a Contract, and Buyer shall have no right to revoke acceptance, unless written notice of nonconformity is received by the Buyer within thirty (30) days of delivery.

## 3 SALE AND PURCHASE

- 3.1 Prices, discounts and payment terms are those in effect at the time of written acceptance of order by the Seller.
- 3.2 No order which has been accepted by the Seller may be cancelled by the Buyer except with the written agreement of the Seller and provided that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by the Seller, subject to the Seller taking all reasonable steps to mitigate any such loss.

- 3.3 The standard payment terms are that stipulated on the official quotation issued by Seller unless notified by the Seller.

**4 SPECIFICATION**

- 4.1 The Buyer shall ensure the accuracy of any order (including any applicable specification) submitted to the Seller.
- 4.2 If the Products are to be manufactured or any process is to be applied to the Products by the Seller in accordance with any specification given by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 4.3 The Seller reserves the right to make any changes in the design, construction or specifications of the Products without notice. This may include changes required conform to any applicable safety or other requirements or which do not materially affect their quality or performance.
- 4.4 The Seller also reserves the right to discontinue the manufacture and sale of any Products without prior notice.

**5 DELIVERY**

- 5.1 Unless the parties mutually agree on a different shipping term, Products will be shipped FOB Seller's shipping point. Delivery of the Products shall be completed when either:
  - 5.1.1 the Seller notifies the Buyer that the Products are ready for collection from the Shipment Address; or
  - 5.1.2 (if the Seller has agreed in writing to arrange (at the Buyer's expense) for the Products to be transported to such address as is nominated in writing by the Buyer) the Seller dispatches the Products to the courier for transportation.
- 5.2 Except where the Seller agrees in writing to arrange (at the Buyer's expense) for the Products to be transported to such address as is nominated in writing by the Buyer (in which case condition 5.4 shall apply), the Buyer shall collect the Products from the Seller's premises within 3 Business Days of the Dispatch Date.
- 5.3 The Seller shall endeavour to make the Products available for collection at the Shipment Address on or around the Estimated Dispatch Date but the Buyer acknowledges that this is a non-binding estimate only and time shall not be of the essence of a Contract. If no dates are so specified, the Products will be available for collection within a reasonable time.
- 5.4 If the Seller agrees in writing to arrange (at the Buyer's expense) for the Products to be transported to such address as is nominated in writing by the Buyer, the Seller shall endeavour to dispatch the Products from the Delivery Location to the courier on or around the Estimated Dispatch Date but

the Buyer acknowledges that this is a non-binding estimate only and time of dispatch shall not be of the essence of a Contract. If no dates are so specified, dispatch shall be within a reasonable time.

- 5.5 The Seller shall be entitled to deliver the Products to the Shipment Address in instalments in which case each installment shall be treated as an entirely separate Contract and any default or breach by the Seller in respect of any such installment shall not entitle the Buyer to cancel any other instalment or treat a Contract as a whole as repudiated.
- 5.6 The Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind a Contract unless such delay exceeds 180 days.
- 5.7 For orders in excess of 500 Product units, if the Seller delivers to the Shipment Address a quantity of Products up to 1% more or less than the quantity accepted by the Seller, the Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall.
- 5.8 The quantity of any consignment of Products as recorded by the Seller on collection by the Buyer or dispatch to the courier from the Shipment Address shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence proving the contrary.
- 5.9 The Seller shall not be liable for any non-delivery of Products by the courier (even if caused by the Seller's negligence) unless the Buyer gives notice to the Seller of the non-delivery within seven days of the date when the Products would in the ordinary course of events have been received from the courier.
- 5.10 Any liability of the Seller for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.
- 5.11 If for any reason the Buyer fails to arrange collection of any of the Products or the Seller is unable to dispatch the Products to a courier because the Buyer has not provided appropriate instructions, documents, licences or authorisations, then, without prejudice to any other right or remedy available to the Seller:
  - 5.11.1 risk in the Products shall pass to the Buyer (including loss or damage caused by the Seller's negligence);
  - 5.11.2 the Products shall be deemed to have been delivered;
  - 5.11.3 the Seller may store the Products until actual delivery is made and charge the Buyer for the costs (including insurance) of storage;
  - 5.11.4 the Seller may sell the Products at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Buyer for any shortfall below the price under a Contract; and

5.11.5 the Seller shall be entitled to charge interest (both before and after judgment) on the price payable for the Products under a Contract at 4% over the base rate from time to time from the Estimated Delivery Date to the date of actual delivery.

5.12 Non-Warranty Returns. The Buyer has no right to return Products without Seller's written authorization and written authorization number. Authorization numbers must be referenced on returns and unauthorized returns will not be accepted by Seller. In such event, the Seller shall either credit or refund the price paid by the Buyer in respect of such Products, excluding any original carriage cost and -less a handling charge of 20% of the price paid in respect of such Products, with a minimum charge of \$30.00 per return. All costs relating to the return of Products are the Buyer's responsibility. All returned products may not be obsolete for more than one year and must be in sellable condition.

## 6 PRICES AND PAYMENT

- 6.1 All prices are in U.S. dollars. Unless otherwise agreed by the Seller in writing, the price of the Products shall be the price set out in the Seller's published price lists on the date of a Contract less any applicable discount at the time the order is accepted.
- 6.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Seller which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 6.3 Unless otherwise agreed by the Seller in writing, all prices exclude freight, packaging, insurance, delivery and transportation costs and such costs for each order will be added to the invoice by the Seller and payable by the Buyer.
- 6.4 The purchase price of the Products is exclusive of any applicable taxes, which the Buyer shall be additionally liable to pay to the Seller.
- 6.5 The Seller shall be entitled to invoice the Buyer for all amounts due under a Contract on or at any time after the Dispatch Date.
- 6.6 Unless otherwise agreed in writing, the Buyer shall pay all invoices in full and without any deduction or set off (whether in relation to such invoice or otherwise) by check or bank transfer within 30 (thirty) days of the date of the invoice.
- 6.7 Time for payment shall be of the essence of each Contract.
- 6.8 No payment shall be deemed to have been received until the Seller has received clear funds and all payments shall be applied to invoices and to Products listed in such invoices in the order determined in its discretion by the Seller.
- 6.9 Prior authorisation is required for payment in any currency other than the currency invoiced.

6.10 If full payment is not received by the Seller by the due date then without prejudice to any other remedy it may have, either at common law or under condition 12 of these Conditions, the Seller shall be entitled:

6.10.1 to cancel a Contract or suspend any further deliveries of Products to the Buyer under that or any other Contract;

6.10.2 to sue for the entire price of the Products; and or

6.10.3 to charge interest and costs (both before and after any judgment) at the rate of 4% over the base rate from time to time on the outstanding balance; and/or

6.10.4 to require the immediate return to the Seller of all goods agreed to be sold by the Seller to the Buyer in which the property has not passed to the Buyer in accordance with the provisions of condition 12 below and the Buyer hereby agrees to reimburse to the Seller upon demand for the Seller's costs or expenses in recovering such goods.

## **7 EXPORT TERMS**

7.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this condition 7, but if there is any conflict between the provisions of Incoterms and this condition 7, the latter shall prevail.

7.2 The following provisions of this condition 7.2 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions:

7.2.1 the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them;

7.2.2 if the Seller agrees in writing to arrange for the Products to be transported to such address as is nominated in writing by the Buyer, the Buyer shall be responsible for all costs of transportation from the Shipment Address;

7.2.3 the Buyer shall be responsible for arranging for testing and inspection of the Products at the Shipment Address before collection or dispatch from the Shipment Address; and

7.2.4 the Seller shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after collection or dispatch, or in respect of any damage during transit.

## **8 EQUIPMENT**

8.1 The Seller may, from time to time, supply the Buyer with loan or demonstration equipment ("Equipment"). The ownership of the Equipment shall remain with the Seller but risk in the Equipment shall pass to the Buyer on delivery. The provisions of condition 13 shall apply to the Equipment.

8.2 The Seller reserves the right to invoice the Buyer in accordance with the Seller's published price list from time to time for any Equipment which the Buyer fails to return to the Seller within a reasonable timescale following the request by the Seller for the return of such Equipment.

**9 WARRANTY**

9.1 The Seller warrants that the Products will be, upon delivery and for the period stated in condition 9.3, of satisfactory quality and be reasonably fit for any particular purpose for which the Products are being bought provided the Buyer had made known that purpose to the Seller in writing and the Seller confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller, PROVIDED THAT:

9.1.1 the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;

9.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage or negligence by the Buyer or persons using the Products, abnormal working conditions, failure to follow the Seller's written instructions or misuse or alteration or repair of the without the Seller's approval;

9.1.3 the Seller shall be under no liability if the total price of the Products has not been paid by the due date for payment;

9.1.4 any such defect in or failure to meet any such specification by the Products shall be notified to the Seller in writing as soon as reasonably practicable after the Buyer discovers such defect or non-conformity;

9.1.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer to the Seller; and

9.2 The Seller shall not be liable for a breach of any of the warranties in condition 9.1 unless:

9.2.1 the Buyer gives written notice of the defect to the Company within the warranty period, and, if the defect is as a result of damage in transit to the carrier, within fourteen (14) days of the time when the Buyer discovers or ought to have discovered the defect; and

9.2.2 the Seller is given a reasonable opportunity after receiving notice of examining such Products and the Buyer (if asked to do so by the Seller) returns the Products to the Seller's place of business at the buyers cost for the examination to take place.

9.3 The warranty periods are as follows unless otherwise stated by the Seller in writing:

Products manufactured by the Seller	Repairs	Spare Parts	Products manufactured by a third party
24 months on a repair or replace basis	3 months	3 months	Based on individual manufacturer's warranty



Products manufactured by the Seller also include type 1 and type 2 microphones.

9.4 Consumables, including without limitation, dry-cell and alkaline batteries, are not covered by the warranty.

9.5 Where re-chargeable batteries are part of the integral product design and that the product is shipped with batteries installed or where replacement batteries are supplied for such product (example: TUFF Pump, dBadge®); the product warranty does not apply to batteries as they are covered by a twelve-month period assuming that the user has used the correct charger and followed the correct charging regime.

9.6 In the event of any valid claim under condition 9.1 above being made by the Buyer, the Seller shall at its sole discretion replace or repair the Products (or the defective part in question) free of charge or, at the Seller's sole discretion, provide a credit or refund to the Buyer the purchase price of the Products (or a proportionate part of the price as appropriate) provided that, if the Seller so requests, the Buyer shall at the Seller's expense, return the Products to the Seller or the part of such Product which is defective. Products need to be sent back to the place of purchase with proof of purchase.

## **10 LIMITATION OF LIABILITY**

10.1 Subject to condition 10.3, the following provisions set out Seller's entire financial liability to Buyer (including any liability for the acts or omissions of its employees, agents and sub-contractors) in respect of:

10.1.1 any breach of these conditions, including any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;

10.1.2 any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with a Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from a Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Seller:

10.3.1 for death or personal injury caused by the Seller's negligence; or

10.3.2 for any Claim under condition 11; or

10.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

10.3.4 for any intentional repudiatory breach; or

10.3.5 for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of a Contract shall be limited to a Contract price; and

10.4.2 the Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with a Contract.

## **11 INTELLECTUAL PROPERTY RIGHTS**

11.1 Unless otherwise agreed between the parties, all Intellectual Property Rights in and to the Products belong to the Seller and/or its licensors and nothing contained herein shall be construed to sell, convey or transfer Seller's Intellectual Property Rights.

11.2 The Buyer shall not modify, adapt, develop, reverse engineer, decompile, or disassemble any Products except to the extent that it's right to do so cannot be excluded under applicable law.

11.3 Software forming part of, loaded within or associated with the Products is proprietary to the Seller and may not be copied, used or supplied to any third party without the Seller's prior written consent.

11.4 The Seller shall at its expense defend any action against the Buyer and pay all damages and costs awarded against the Buyer (except to the extent that the Buyer is entitled to recover such sums under any policy of insurance) based on a claim that any of the Products constitute an infringement of any Intellectual Property Rights or misuse any confidential information belonging to any third party (a "Claim") PROVIDED THAT:

11.4.1 the Seller shall be notified promptly in writing by the Buyer of any notice of a Claim;

11.4.2 the Seller shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise;

11.4.3 the Buyer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending any action; and

11.4.4 the Buyer shall take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.

11.5 If a Claim is successful or the Seller considers that it is likely to be successful, the Seller may, at its option or as part of a settlement or compromise, modify the Products so that they are non-infringing or terminate any Contracts in so far as they apply to those Products subject to the Claim, in which latter case the Seller shall refund to the Buyer the price paid for such Products less depreciation on a straight line basis over the life of the Products as determined by the Seller.

11.6 In no event shall the Seller have any liability under this condition 11 with respect to any Claim based on the use of the Products in combination with any other product or equipment not supplied by the Seller.

11.7 This condition 11 states the entire obligation and liability of the Seller with respect to infringement of Intellectual Property Rights.

## **12 RISK AND TITLE**

12.1 Risk of damage to or loss of the Products shall pass to the Buyer on delivery or deemed delivery to transportation company at shipping point, in accordance with these Conditions.

12.2 Notwithstanding delivery and the passing of risk in the Products, or any other provisions of these Conditions, the ownership of the Products shall not pass to the Buyer and shall be retained by the Seller until the Seller has received in full, in cleared funds, all sums in respect of the Products and all other sums which are or which become due from the Buyer on any account.

12.3 Until ownership of the Products has passed to the Buyer, the Buyer shall:

- 12.3.1 hold all goods owned by the Seller on a fiduciary basis as the Seller's bailee;
- 12.3.2 store them in such a way that they are clearly identifiable as the Seller's property;
- 12.3.3 maintain records of such goods, identifying them as the Seller's property; and
- 12.3.4 keep them in satisfactory condition, properly stored, protected and insured.

12.4 The Buyer shall be entitled to resell or use such goods in the ordinary course of its business before ownership has passed to it but shall account to the Seller in respect of the proceeds of sale or otherwise of such goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any other monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly identified, stored, protected and insured.

12.5 The Buyer shall maintain records of the persons to whom it sells or disposes of such goods and of the payments made by such persons for such goods and will allow the Seller to inspect these records and the goods themselves on request. The Seller shall be entitled to trace the proceeds of sale or otherwise of such goods.

12.6 For the avoidance of doubt, the Products and all other goods supplied to the Buyer by the Seller which are in the Buyer's possession shall be presumed to belong to the Seller unless the Buyer can prove otherwise.

12.7 The Buyer's right to possession of the Products shall terminate immediately if:

- 12.7.1 the Seller has a right to terminate a Contract under condition 14.1 (irrespective of whether the Seller terminates a Contract); or
- 12.7.2 the Buyer encumbers or in any way charges any of the Products.

12.8 Until such time as the property in any Products owned by the Seller passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up such Products to the Seller. The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

12.9 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Seller. But if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

12.10 On termination of a Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 12 shall remain in effect.

### **13 LAWS AND REGULATIONS**

13.1 The Buyer shall comply with all laws and regulations relating to the ownership and use of the Products including health and safety requirements.

13.2 The Buyer shall obtain all necessary licenses or permits required to carry on its business and distribute Products. Buyer shall comply with all applicable laws, rules and regulations related to the sale of Products, whether such laws, rules or regulations are those in effect in the Territory or in the United States of America, including without limiting the generality of the foregoing, any import/export restrictions and regulations in force related to the sale of Products.

### **14 TERMINATION**

14.1 The Seller shall, without limiting any other right or remedy available to it, be entitled to suspend any further deliveries under and/or terminate any Contract forthwith by notice in writing to the Buyer if the Buyer:

14.1.1 commits an irremediable breach of a Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or

14.1.2 becomes insolvent, or upon the appointment of any Receiver or Trustee to take possession of the property of the Buyer; or

14.1.3 the Buyer ceases or threatens to cease to carry on business: or if the Seller reasonably apprehends that any of such events is about to occur in relation to the Buyer and notifies the Buyer accordingly.

14.2 In the event of termination by the Seller pursuant to condition 14 above then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel any Contracts or suspend any further deliveries under it without any liability to the Buyer and, if the Products have already been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller.

### **15 NOTICES**

15.1 Subject to condition 15.3, any notice required to be given under any Contract, shall be in writing and shall be delivered via certified mail, courier, or sent by fax or email to the other party's address fax number or email address, as appropriate, as specified by the relevant party by notice in writing to the other party (with a confirmation copy concurrently dispatched by prepaid post or courier service).

15.2. A correctly addressed notice sent by post shall be deemed to have been received at the time when it would have been delivered in the normal course of post. A notice sent by fax or email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **16 ASSIGNMENT**

16.1 The Seller may assign a Contract or any part of it to any person, firm or company.

16.2 Buyer may not assign, transfer, subcontract or otherwise part with its Contract rights or obligations without the Seller's prior written consent.

## **17 FORCE MAJEURE**

17.1 The Seller reserves the right to defer the date of delivery or to cancel a Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate any Contract.

## **18 VARIATION**

18.1 The Seller reserves the right to revise and amend these Conditions from time to time. Each Contract will be subject to the conditions in force at the time that Products are ordered if the Seller notifies the Buyer of the change to these Conditions before confirming the order (in which case the Seller shall assume that the Buyer has accepted the change to the Conditions, unless the Buyer notifies the Seller to the contrary).

## **19 GENERAL**

19.1 Each right or remedy of the Seller under a Contract is without prejudice to any other right or remedy of the Seller whether under a Contract or not.

19.2 If any provision of a Contract or these Conditions are found by any court of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of a Contract or these Conditions and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of a Contract shall not be construed as a waiver of any of its rights under a Contract.

19.4 Any waiver by the Seller of any breach of, or any default under, any provision of a Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of a Contract.

19.5 The parties to a Contract do not intend that any term of a Contract shall be enforceable by virtue of a Contracts by any person that is not a party to it.

19.6 These Conditions and any dispute or claim arising out of or in connection with them or its subject matter shall be governed by and interpreted solely and exclusively in accordance with the laws of the State of Illinois without regard to the conflicts of law provisions thereof, and the parties hereto consent to the exclusive jurisdiction of Illinois courts.