



## TERMS AND CONDITIONS OF SALE

### THETA TTS INC.

Wednesday, August 30, 2017

Theta TTS Inc. (“Theta”), offers to sell/provide (each a “Sale”) goods and services (“Deliverables”) only on the terms and conditions herein, which, together with the Specifications, as defined below, constitute the entire agreement between Theta and the customer/buyer (“Buyer”).

- 1. Contract; Terms Exclusive.** Theta’s offer to sell Deliverables shall be deemed accepted by Buyer’s purchase of Deliverables, Buyer’s submission of a request for proposal to purchase Deliverables, Buyer’s submission of a purchase offer to purchase Deliverables, or any other act, communication or instrument of Buyer in response to which Theta sells Deliverables to Buyer (each a “Purchase Order”). If Buyer’s Purchase Order or other correspondence contains terms or conditions contrary to or in addition to these terms and conditions, acceptance of any Purchase Order by Theta shall not be construed as assent to such contrary terms and conditions or constitute a waiver by Theta of any of these terms and conditions, and Theta expressly objects to any and all different or additional terms and conditions of Sale which Buyer may set forth on any Purchase Order, unless Theta specifically agrees to them in writing. No discussions or negotiations with Buyer regarding Buyer’s proposed terms and conditions shall be construed or deemed an acceptance of Buyer’s terms and conditions, or a modification of Theta’s terms and conditions. **THIS OFFER IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS. IF THIS FORM IS DEEMED AN ACCEPTANCE OF A PRIOR OFFER BY BUYER, THETA’S ACCEPTANCE IS EXPRESSLY CONDITIONED ON BUYER’S ASSENT TO THESE TERMS AND CONDITIONS.**
- 2. Deliverables Being Purchased; Specifications.** The specific nature and design of the Deliverables, the quantity ordered, date(s) of delivery, price and other specifications applicable to the Deliverables being purchased shall be as agreed upon by Theta and Buyer and are collectively referred to herein as “Specifications”. In the event Theta has in any manner assisted Buyer in the preparation of Buyer’s Specifications, Theta has done so solely as an accommodation to Buyer, and Buyer shall nonetheless remain solely responsible for the accuracy and completeness of Buyer’s Specifications, and Theta shall not be liable for any loss, liability, cost, damage or expense incurred by Buyer arising out of or in connection with any claim or threatened claim that any Specification is incomplete or inaccurate and/or that the design of any product is defective in whole or in part due to any such assistance by Theta. Specifications shall not include any general terms and



conditions of purchase, even if referred to as part of Buyer's Specifications. Theta shall have no obligation to ensure that any Deliverables purchased from Theta meet any unique specifications and/or other requirements unless set forth in Buyer's Purchase Order and expressly accepted by Theta.

3. **Price and Payment.** The purchase price for the Deliverables shall be as set forth in the Purchase Order. If no payment terms are stated in the Purchase Order, the purchase price shall be payable within thirty (30) days of the date of Theta's invoice. If completion of manufacture or shipment is delayed by Buyer, Theta reserves the right to regard date of completion as date of shipment and require payment based upon percentage of completion. Deliverables held as a result of Buyer's inability or refusal to accept delivery are at the risk and expense of Buyer, including, without limitation, all of Theta's handling, reshipping, restocking and storage charges. Interest at the rate of one and one-half percent (1 1/2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid in full by Buyer by the due date thereof. Such interest shall be in addition to the purchase price. Theta may, without notice, change or withdraw extensions of credit at any time, in which event Theta may require cash payments and/or collateral security for account balances. Theta may also refuse to sell to Buyer until overdue accounts are paid in full. If Buyer fails to make any payment when due, in addition to all other sums payable hereunder, Buyer shall pay Theta the reasonable costs and expenses incurred by Theta in connection with any actions or steps taken to enforce collection of such unpaid amounts and to protect Theta's rights, whether by legal proceedings or otherwise, including, without limitation, reasonable lawyers' fees, court costs and other expenses. Theta's election not to commence legal proceedings to enforce its rights of collection shall not be deemed a waiver by Theta of its rights to commence such proceedings in the future. Without limiting Theta's lien rights pursuant to the Ontario Repair and Storage Liens Act, Theta reserves the right to retain custody of tooling and/or any other property of Buyer in Theta's control until Buyer pays Theta all amounts owing by Buyer to Theta.
  
4. **Retained Security Interest.** Buyer hereby grants Theta a security interest in the Deliverables to secure the payment of same until the entire purchase price has been paid in full. Without restricting the generality of the foregoing, Buyer also hereby grants to Theta a purchase money security interest in the Deliverables (including, but not limited to, a purchase money security interest in inventory) together with all replacements thereof, and all accessories and parts related thereto (collectively the "Inventory"). A security interest and a purchase money security interest are likewise granted in the proceeds of sale of the Inventory. Buyer hereby authorizes Theta to do whatever Theta may deem necessary to preserve, to perfect or continue its aforesaid security interests including, without limitation, registration under the Personal Property Security Act of Ontario (in instances where Buyer is organized in Canada) or filing financing and related statements



under the Uniform Commercial Code (in instances where Buyer is organized in the United States), as applicable, and any other similar personal property security registration system in any other applicable jurisdiction.

5. **Taxes.** Unless otherwise agreed in writing, prices listed do not include any applicable present or future sales, use, privilege, excise, GST, HST, or other taxes, or any export or import taxes, customs duties, brokerage fees, freight, insurance, container packing or the like, all of which shall be for the account of and be paid by Buyer in addition to the purchase price for the Deliverables. Applicable taxes, if any, shall be paid by Buyer either directly to the taxing authority or, if collected by Theta, to Theta upon receipt of Theta's invoice for the amount of the tax. In the case of controversy as to whether a transaction is taxable, Buyer agrees to remit the amount of the tax to Theta pending a specific ruling from the taxing authority which assesses or collects the tax.
6. **Changes.** At any time, Theta may make changes to the design or composition of Deliverables that, in its judgment, do not materially change the form, fit, function or quality of the Deliverables. Changes in design or composition made at the request of Buyer shall be at Buyer's risk and responsibility, at the expense of Buyer, and shall be paid for upon receipt of Theta's invoice. Theta will not incur any liability for reasonable delay in shipment of Deliverables attributable to Buyer's change to the design or composition of Deliverables.
7. **Delivery.** Specified shipment/delivery dates are approximate. Unless otherwise agreed to in writing, Deliverables will be shipped F.O.B. Theta's plant. Title and risk of loss shall pass to Buyer upon delivery to common carrier. If freight must be prepaid, payment will be made for the account of Buyer. In the event goods require extra or special packaging due to the nature of the Deliverables, the manner in which they will be transported or otherwise, Buyer is responsible for the extra charges therefore. Theta shall not be liable for shipment delays, or any loss or damage to Deliverables while in transit, and all claims therefore shall be made immediately by Buyer to the carrier. Theta reserves the right to deliver Deliverables in installments unless expressly agreed otherwise. Theta will invoice installment deliveries at the time of shipment unless otherwise agreed in writing. Delay in any installment delivery shall not relieve Buyer of its obligation to accept all remaining installment deliveries.
8. **Returns.** Deliverables may be returned by Buyer only when authorized in writing by Theta. Deliverables must be returned properly packaged and shipped freight prepaid to Theta.
9. **Setoff; Deductions.** In no event is Buyer authorized to deduct any amounts from the amounts owed Theta unless specifically authorized in writing by Theta.



10. **Quantity.** Theta shall have no obligation to provide any Deliverables in excess of the amount set forth in the Specifications. Buyer will notify Theta of any excess Deliverables delivered to Buyer and, upon Theta's request, will return any excess Deliverables to Theta.
11. **Recalls.** If Buyer is directed by Theta or any governmental authority to assist in any suspension of supply or recall of Deliverables for any reason, Buyer must cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall. The cost and expense of such suspension or recall will be borne by (a) Theta to the extent the costs and expenses are the result of Theta's acts or omissions; and (b) Buyer to the extent the costs and expenses are the result of acts or omissions of Buyer, its directors, officers, employees, or contractors.
12. **Patents and Proprietary Rights.** Buyer represents and warrants to Theta that Buyer's Specifications do not infringe upon any Canadian, United States or foreign patent right, copyright, trademark or other proprietary right of any third person whatsoever. Buyer shall indemnify and hold harmless Theta from and against each and every loss, liability, cost, damage or expense (including reasonable lawyer's fees) (each, a "Loss") of whatever kind or nature, which arise directly or indirectly out of or in connection with any allegation, claim or charge that Buyer's Specifications or Theta's use thereof constitutes an infringement of any patent or patent right, copyright, trademark or other proprietary right or interest of any other party. Buyer shall, upon Theta's request, assume and pay for the defense of Theta against any such allegation, claim, or charge. Buyer shall promptly notify Theta of any action or proceeding commenced against Buyer with respect thereto. Theta shall have the right to be represented in such matters by additional counsel of Theta's choice, acting at Theta's expense. In the event of any such allegation of infringement, Theta may also cancel any Purchase Orders from Buyer without obligation or liability to Theta. Theta shall retain exclusive ownership of all right, title, and interest in and to all of Theta's own intellectual property, and Theta's sale of the Deliverables to Buyer does not grant or confer upon Buyer or any other person any express or implied license in or to any of Theta's intellectual property.
13. **Permits.** Buyer represents and warrants to Theta that is has all necessary permits and licenses necessary to permit the lawful purchase and use of the Deliverables and to make any subsequent resale of the Deliverables.
14. **Limited Warranty.** Theta warrants that Deliverables shall (i) be free from faulty workmanship, and (ii) comply in all material respects with the Specifications; provided Theta shall not be responsible for any defect in quality or design attributable to Buyer's Specifications, such as Buyer's specifying the design, the materials to be used in, or the means or methods used by Theta in producing any Deliverables or for any materials supplied by Buyer or purchased by Theta from Buyer designated suppliers. Theta shall not be liable if Buyer fails to include all appropriate dimensional data in the Specifications or if Buyer includes incorrect data relating to materials or dimensions in the Specifications.



Theta's limited warranty immediately terminates in the event Buyer alters the Deliverables in any fashion, including the application of any process that may affect the performance of Deliverables, such as, by way of example only, heat treatment, plating, or grinding. The foregoing warranty shall be limited to the ninety (90) day period commencing on the date of shipment; in each case provided that the Deliverables have been properly cared for by Buyer, and provide that Buyer promptly notifies Theta in writing of any warranty claim hereunder within said warranty period. In the event any Deliverable fails to meet the foregoing warranty within said warranty period, Theta's sole obligation shall be, in its sole discretion, to either correct the matter or replace the non-conforming Deliverables. Theta shall not be liable for any problems with any Deliverables resulting from (i) any alterations to any Deliverables made by Buyer or a third party, or (ii) any other act or omission of Buyer or any third party. The foregoing warranties provided by Theta are the only warranties provided by Theta with respect to Deliverables, and these warranties may be modified or amended only by a written instrument signed by an authorized officer of Theta. EXCEPT FOR THESE EXPRESS WARRANTIES, THETA MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR DESIGN. Any sample or literature provided to Buyer was to illustrate the general type of Deliverables and not an affirmation that the Deliverables will conform. No employee or representative of Theta has authority to bind Theta to any representation, affirmation or warranty not specifically included herein.

15. **Limitation of Liability.** Notwithstanding anything to the contrary contained herein, Theta's aggregate liability in connection with the Sale or provision of any Deliverables, regardless of the form of action giving rise to such liability (whether in breach of warranty, contract, negligence, strict liability or any other theory in contract, tort or otherwise), including but not limited to Losses suffered or incurred pursuant to Section 11 above, shall not exceed the amount actually paid by Buyer to Theta for such Deliverables. IN NO EVENT SHALL THETA BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF THETA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. All remedies of Buyer shall be limited exclusively and in lieu of any and all other remedies to those contained in these terms and conditions.
16. **Advice.** Theta assumes no obligation or liability for any advice provided by Theta respecting Buyer's Specifications, the use of Deliverables or for any results occurring from Buyer's application of such advice.
17. **Confidential Information.** The terms of any Purchase Orders from Buyer to Theta shall be kept confidential. Technical information contained in plans, drawings, specifications, photographs and other documents disclosed or furnished by Theta in respect of any Deliverables constitutes confidential and proprietary property of Theta. In the absence of





express prior written permission of Theta, Buyer shall hold all such confidential and proprietary information in confidence and Buyer shall not share such confidential information without anyone outside its organization, and Buyer may not sell or dispose of any portion thereof. Buyer shall not issue any publicity or advertising relating to Purchase Orders, Deliverables, or Buyer's relationship with Theta without Theta's prior written consent. In the event of any breach of confidentiality by Buyer, Theta shall be entitled to all remedies available at law and in equity, including the recovery of any special, consequential, or indirect damages, lost profits, and/or the imposition of injunctive relief.

18. **Default; Indemnification.** If Buyer shall fail to pay all or any part of the sums due or to become due to Theta, fail to comply with these terms and conditions, fail to keep or perform any of Buyer's obligations, become insolvent or become a party to any insolvency proceeding or receivership, or become a judgment debtor, at Theta's option, any sum due or to become due to Theta may become immediately due and payable in full. Buyer shall indemnify and hold harmless Theta from and against each and every loss incurred or suffered by Theta which are or are claimed to be in any manner, directly or indirectly, in whole or in part, caused, contributed to or occasioned by reason of Buyer's, its employees', agents' or representatives' default or breach of any representation, warranty, obligation or covenant of Buyer contained in any Purchase Order, or Buyer's performance or failure to perform hereunder, or its negligence, whether active or passive, and, without limiting Buyer's liability, the foregoing shall include injury to or death of any person or persons and damage to or loss of property. Concurrently, or in the alternative, Theta may, at its option, in addition and without prejudice to its other lawful rights and remedies and without any liability to the Buyer, (i) defer further shipments of Deliverables until each default has been corrected to Theta's satisfaction, or (ii) elect not to make any further shipments of Deliverables, and/or (iii) exercise any other remedies available under applicable law. Waiver of any default shall not be a waiver of any other subsequent default. No course of conduct, nor any delay of Theta in exercising any rights, nor Theta's acceptance of a payment from Buyer with knowledge of an existing default or breach, shall waive any rights of Theta or be deemed a modification of any Purchase Order.
19. **Right of Termination.** Theta, at any time upon notice to Buyer, may terminate or reduce its obligations to deliver Deliverables. In such event, Buyer shall pay for all work completed hereunder on a percentage of completion basis. Buyer shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of any action taken or notice given by Theta under or pursuant to the provisions hereof. Purchase Orders may be cancelled by Buyer only with the written consent of Theta and upon Buyer's payment for any and all expenses and other losses and damages incurred by Theta a result of such cancellation, including Theta's out of pocket costs, overhead, and anticipated profit.
20. **Financial Responsibility.** Buyer warrants that it has and will at all times maintain and, upon request by Theta, show that it has sufficient working capital and financial ability to



perform and complete its obligations herein. Buyer warrants to Theta that it is not insolvent within the meaning of (a) the Bankruptcy and Insolvency Act R.S.C. 1985, CB-3 as am (if Buyer is organized in or does business in Canada); and/or (b) United States Bankruptcy Laws and the laws of the states in which it conducts its business (if Buyer is organized in a United States jurisdiction or does business in the United States). In addition to any and all other rights and remedies which Theta may have pursuant to the law of contracts or at common law, Theta reserves the right to terminate its obligations, without liability, in respect of any undelivered Deliverables if Buyer shall (i) become insolvent or bankrupt, (ii) make any general assignment for the benefit of its creditors, (iii) if any trustee or receiver is appointed of any substantial part of Buyer's assets or (iv) Buyer shall be adjudicated a bankrupt.

21. **Force Majeure.** Theta shall not be liable for any failure or delay in delivery or otherwise performing its obligations hereunder with respect to any goods or services being purchased if such failure or delay is caused by a strike, lockout, labor dispute, accident, war, act of terrorism, act of God, fire, flood, or other casualty or cause beyond Theta's reasonable control.
22. **Entire Agreement.** These terms and conditions, together with the applicable Specifications, constitutes the sole and entire agreement between Theta and Buyer with respect to the Deliverables and the subject matter hereof, and all prior or contemporaneous understandings or agreements, oral or written, are merged herein. No subsequent changes or modifications of these terms and conditions are binding upon Theta unless accepted by it in writing and signed by an authorized signing officer of Theta. Buyer expressly waives all provisions contained in correspondence, forms, or other writings relating to the Sale of the Deliverables which negate, limit, extend, or conflict with the provisions hereof. In the event any term or provision hereof shall be deemed unenforceable, the remaining terms and conditions shall remain in effect to the fullest extent possible.
23. **Controlling Law; Jurisdiction.** These terms and conditions and the transaction to which these terms and conditions relate, shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada, without effect given to any choice of law provisions or rules. All disputes between Theta and Buyer relating hereto shall be resolved exclusively in the courts of appropriate subject matter jurisdiction located in Toronto, Ontario. Buyer consents to the personal jurisdiction of such courts. For greater certainty, the application of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.
24. **Assignment.** Buyer may not assign or transfer any right or interest in or to these terms and conditions and/or the transaction to which these terms and conditions relate to any third party whatsoever without the prior written consent of Theta.
25. **Notices.** Any and all notices required to be given hereunder shall be in writing and



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hand-delivered (including by commercial courier), with an appropriate receipt thereof obtained, or sent by United States certified mail, return receipt requested, to the addresses of the respective parties set forth on the face hereof, or to such other address as either party may designate to the other by written notice for such purpose from time to time.

26. **Non-Waiver.** Theta's exercise or failure to exercise or enforce any right or remedy granted or provided by these terms and conditions or its acceptance of or payment for any Deliverables shall not be deemed as or construed to be a waiver of any right or remedy it may have for Buyer's then existing or subsequent default or breach of any representation, warranty, obligation, or covenant applicable to a Purchase Order.