

BIT Group
Terms and Conditions of Sale – North America
Effective as of May 2014

1. Scope of Agreement. These General Terms and Conditions of Sale and Delivery (this "Agreement") shall govern all provision of goods and/or services in North America by any member of the BIT Group, including without limitation BIT Group USA, Inc., BIT Analytical Instruments GmbH and BIT C2D (referred to herein as "Seller") to a person placing an order for such goods or services with such member of BIT Group (referred to herein as the "Buyer"). Any additional or inconsistent term, condition or confirmation, whether contained in a purchase order or other document, shall be binding upon Seller only if and insofar as Seller has expressly consented to it in writing. Seller's mere silence with respect to, or performance following, receipt of such deviating terms, conditions or confirmations shall not be construed as acknowledgement or consent. Seller hereby expressly objects to all such deviating terms, conditions or confirmations of the Buyer.
2. Orders and Contract Formation.
 - 2.1. No offer or purchase order shall be binding upon Seller unless and until Seller has delivered to the Buyer a written Confirmation of Acceptance of Order signed by Seller's Contracting Officer (an "Order Confirmation"). All quotations shall be subject to change in Seller's discretion unless and until Seller has issued an Order Confirmation.
 - 2.2. In no event will Seller be bound by any verbal agreement, course of dealing or other act or circumstance that is not embodied in a document signed by Seller's Contracting Officer. Ancillary arrangements, commitments, amendments to contract and other agreements are only valid if in written form and duly signed by Seller's Contracting Officer.
 - 2.3. The quantity of goods delivered or services to be provided shall be specified in Seller's Order Confirmation. Written objection to the delivery of excess quantities or short shipments must be given to Seller within 3 (three) workdays following delivery; otherwise, the shipment shall be deemed accepted.
 - 2.4. The Buyer may specify information such as weights, measurements, technical data and other specifications for Goods or Services (collectively "Specifications") by reference to a particular example, product description or a presentation, but no Specification shall be binding upon Seller unless and until it is specifically confirmed in writing, either in an Order Confirmation or other document signed by Seller's Contracting Officer. In no event will Seller have responsibility for errors in Specifications that are provided to Seller by the Buyer.
 - 2.5. All software, quotations, drawings and other data provided to the Buyer shall be deemed to be Seller's confidential information and shall be held in confidence by the Buyer. Seller retains all copyright, trade secret and other rights in all such materials.
 - 2.6. Seller agrees to perform the services ("Services") and/or provide the goods or deliverables (collectively, "Goods") described in the Order Confirmation in accordance with the terms and conditions set forth herein and in the Order Confirmation, including any statements of work or other documents attached to or specifically incorporated into the Order Confirmation by reference.
 - 2.7. Any quotation prepared by Seller in response to an inquiry from Buyer shall be valid for a period of no longer than 90 days, unless specifically extended in writing.
3. Invoices and Prices.
 - 3.1. Invoices shall be prepared by Seller and sent to Buyer on a periodic basis. All invoices are to include itemized expense detail.
 - 3.2. All prices are EXW Seller's works (INCOTERMS 2000). Prices shown on invoices are understood to be in U.S. dollars. All costs and risks of packaging, shipment and handling shall be borne by the Buyer. All prices contained in any Order Confirmation apply exclusively to the Goods or Services covered by the Order Confirmation. Extra and special services are billed separately at Seller's ordinary and usual rates.
 - 3.3. The prices do not include any taxes, fees, customs duties or other levies imposed by any country, state or municipality. Should such levies be imposed upon Seller by any jurisdiction, whether before or after issuing an Order Confirmation, the amounts will be added to Seller's invoice, excluding only taxes based on Seller's net income. For Buyers located in California, such taxes are presently applicable to the prototype fabrication, reproduction design, production design and graphic artwork phases. Other taxes may apply if the Buyer is located in another state or country.
 - 3.4. Fees for Services. All fees for services will be based upon Seller's standard fee schedule for the period during which the services are rendered.
 - 3.5. Travel. Unless stated otherwise, Seller's standard fee schedule does not include travel expenses (airfare, meals and accommodations) or travel time. All billable travel will be pre-approved by the Buyer. Buyer-approved travel expenses are billed at cost plus a 5% administration fee. Travel time is billed at Seller's standard hourly rates in effect at the time of travel, except that for travel time in excess of 8 consecutive hours, the excess travel time is billed at 50% of Seller's standard hourly rates.
4. Payment Terms.
 - 4.1. Seller's invoices are payable immediately, unless otherwise agreed in writing. If any extended payment terms are granted, Seller has the right to revoke those terms at any time without notice and demand immediate payment of Buyer's account. Seller shall not be obligated to ship until Seller has received any required prepayment in collected and currently available funds for the goods contained in the shipment and all taxes and other ancillary amounts. Payment in full will not be deemed to have been made until the amount of Seller's invoice plus all ancillary claims have been credited to Seller's account. Payments may be made by wire transfer to the account that Seller designates in the Order Confirmation.
 - 4.2. Seller shall have the right, in addition to all other rights and remedies available to Seller at law or in equity, to require prepayment or the posting of collateral reasonably acceptable to Seller if the Buyer fails to pay any invoice when due, becomes insolvent, makes an assignment for benefit of creditors or if Seller otherwise has reasonable grounds to doubt the credit-worthiness of the Buyer. Should payment not be made or collateral not posted promptly and in no event later than any deadline established by Seller and communicated to the Buyer, and without election of remedies or limitation of any other right or remedy available to Seller, Seller shall be entitled to cancel the relevant Order Confirmation, and any or all other Order Confirmations, and to recover the damage caused by the Buyer's default. Any outstanding delivery, warranty or service obligations shall be suspended for as long as the Buyer has not cured any default in payment.
 - 4.3. Right of Set-off. In no event shall the Buyer have or exercise any right of set-off against unpaid invoices.
 - 4.4. Default in Payment. If the Buyer is in default in payment, the amount in arrears shall be subject to interest from the date payment was due until the date on which payment is actually made at the rate of 10% per annum or the highest rate allowable by law, whichever is lower.
5. Cancellation.
 - 5.1. Either party may cancel an order for Services upon no less than 30 days' written notice to the other party. Buyer will be responsible for all costs associated with any such cancellation by Buyer. Upon any such cancellation by Buyer, Buyer shall immediately compensate Seller for all Services performed and expenses incurred up to the effective date of cancellation, plus reasonable shutdown costs. Seller agrees to deliver all work product paid for up to the effective date of cancellation, upon full settlement of Buyer's account.

BIT Group
Terms and Conditions of Sale – North America
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- 5.2. Neither party may cancel an order for Goods, except as provided in Sections 6.2 and 16. Upon any cancellation of an order for Goods pursuant to Sections 6.2 or 16, Buyer shall immediately compensate Seller for all expenses incurred up to the effective date of cancellation, plus reasonable shutdown costs, which shall include but not be limited to costs of work in process, restocking fees, cancellation fees and costs of unreturnable material purchased.
6. Delivery Deadline and Acceptance.
- 6.1. All delivery dates and time periods for delivery and for providing services must be agreed upon in writing, and represent estimated and not firm dates or time periods, unless otherwise specifically stated in the relevant Order Confirmation. Unless otherwise specifically stated, all time periods shall start to run on the date of the Order Confirmation. Whenever Seller's performance depends on actions of the Buyer (e.g. the provision of Specifications, documents, plans or the like) or other involvement, the time for performance shall be extended by any delay in the Buyer's performance. Seller shall be deemed to have completed delivery when Seller notifies the Buyer that goods are ready for shipment, regardless of whether the Buyer actually makes any required arrangements for shipment. Seller retains the right to recover damages, and to pursue any and every other remedy at law or in equity, in the event that the Buyer fails to meet its obligations under any Order Confirmation.
- 6.2. Buyer acknowledges and agrees that Seller's performance may require special components that may not be immediately available in the market, or that may only be available at prices greater than those in effect at the time of the applicable Order Confirmation, and which cannot be replaced by other components, whether because of required verification or for other reasons. Buyer further acknowledges and agrees that faulty Specifications or other unforeseen problems may cause technical problems in the development of an instrument or other product. Seller shall not be responsible for delays in obtaining, or price increases with respect to, such components, or for delays in solving such technical problems, and any such delay or price increase shall be deemed an event of force majeure for purposes of Section 16. Seller will use reasonable efforts to inform Buyer if Seller believes that such circumstances will cause additional expense. In such case, Seller may terminate the relevant Order Confirmation, unless Buyer shall agree to be responsible for any such additional expenses.
- 6.3. All Goods and Services shall be deemed accepted if Seller does not receive from the Buyer a written rejection within 5 working days after (a) the installation of Goods that are to be installed in Buyer's facilities; (b) the delivery of the Goods that do not require installation; or (c) performance of the Service. Such rejection shall state with particularity the reasons for rejection. Failing such objection in the form and time period required, the products or services shall be irrevocably deemed to have been accepted.
7. Partial Shipment. Partial shipment of Goods and spare parts are permissible under this Agreement.
8. Shipment and Risk of loss.
- 8.1. All shipments shall be EXW Seller's works, and all risk of loss shall pass to the Buyer immediately upon leaving Seller's dock, regardless of whether the goods are delivered thereafter by Seller's staff or agent or are delivered to the Buyer, the forwarding agent, the haulage contractor or other parties appointed to effect shipment. Unless otherwise agreed in writing or otherwise instructed, all shipments will be uninsured and at the risk of the Buyer. The Buyer is solely responsible for the cost of any insurance it may request.
- 8.2. If shipment is delayed because Seller exercises its right of retention on the grounds of total or partial default in payment, or for any other reason for which the Buyer is responsible, all risk of loss shall be transferred to the Buyer at the latest from the date the Buyer was notified of readiness for delivery. The Buyer shall bear the costs of storage after transfer of risk. The Buyer shall call for shipment immediately upon notification of readiness for shipment. If goods that are ready for shipment are not called for, Seller may choose to either dispatch the goods or to store them at the expense and risk of the Buyer.
- 8.3. The Buyer or its authorized representatives are responsible for loading vehicles at Seller's dock. The Buyer shall be solely responsible for compliance with all applicable law and regulation pertaining to the transportation of hazardous or other cargo. For the delivery or collection of "loose" goods, the Buyer is responsible for providing appropriate storage containers.
- 8.4. The Buyer's responsibility for all risk of loss following delivery EXW Seller's works shall not be diminished or altered if Seller's staff assists the Buyer with loading or transportation.
- 8.5. Title and risk of loss of all exchanged goods and parts shall pass to Seller only following their delivery to Seller's dock.
9. Title; Purchase Money Security Interest.
- 9.1. Title to all Goods shall pass upon the later of delivery of the goods EXW Seller's works and payment in full for the goods. To the extent any computer software programs, code or associated documentation is embodied in or otherwise provided to the Buyer in connection with any of the Goods or Services (collectively, together with any and all fixes, updates, modifications and enhancements, if any, as may from time to time be made available by Seller whether pursuant to a statement of work, Order Confirmation or otherwise, "Software"), such Software shall not constitute "Goods" for purposes hereof but shall be subject to the license terms and other provisions contained in Section 10 below.
- 9.2. The Buyer hereby grants Seller a purchase money security interest in all goods to be delivered hereunder, and all proceeds thereof, to secure the purchase price and all other amounts owing hereunder with respect to the goods. The said security interest shall continue in all goods delivered hereunder, notwithstanding that such goods may be commingled with, incorporated into or attached to other goods.
- 9.3. If and to the extent that the goods are commingled with, assembled into or otherwise incorporated with other goods or processed into a new product, the Buyer hereby grants Seller a security interest in all such other goods, and in all proceeds thereof, to secure all amounts owing hereunder.
- 9.4. The Buyer agrees to cooperate with Seller in the execution and filing of such financing statements and other documents, and taking such other actions, as may be required to perfect the security interests granted hereby, and hereby irrevocably appoints Seller as its attorney-in-fact for the purpose of making all such filings and taking all such other actions.
- 9.5. The Buyer undertakes to notify Seller immediately of all unauthorized third party access to the goods or proceeds in which Seller has been granted a security interest, as aforesaid.
- 9.6. In the event of default in payment of any amounts owing hereunder, Seller shall be entitled to exercise all the rights of a foreclosing secured creditor under the Uniform Commercial Code.
- 9.7. If the value of the goods in which Seller holds a security interest exceeds the secured claims by more than 10%, Seller will at the request of Buyer release its security interest in goods of its choosing to reduce the total value of goods in which Seller holds a security interest to 110% of the total amount of the secured claims.

BIT Group
Terms and Conditions of Sale – North America
Effective as of May 2014

10. Software.

- 10.1. Grant of License. Subject to the terms and conditions of this Agreement and the applicable Order Confirmation, Seller hereby grants the Buyer a limited, non-exclusive and non-transferable license to install and use the Software, in object code form only, for the Buyer's internal business purposes. Buyer shall have no rights to access source code of the Software except to the extent, if any, provided by law. If Buyer sells or transfers any Goods in which Software is embedded and, notwithstanding the foregoing, is entitled under applicable law to transfer the foregoing license to such Software to the purchaser or transferee of such Goods, then the license restrictions and all other terms and conditions of this Section 10 shall binding on such purchaser or transferee as if it were Buyer, and Buyer's license and other rights with respect to such Software shall immediately terminate. Upon such sale or transfer, Buyer shall destroy or deliver to the purchaser or transferee any related documentation or backup copies.
- 10.2. Permitted Use. Except to the extent expressly provided in the applicable Order Confirmation, the Buyer may use the Software only for purposes of operating the Goods in accordance with the applicable documentation, and only on equipment which is owned, leased or otherwise controlled by the Buyer. The Software may not be installed or used on a network or otherwise used concurrently or simultaneously on more than one computer or processor. The Buyer may make one copy of the Software in object code form for back-up purposes, provided the Buyer maintains sole possession and control of the back-up copy. Without limiting the foregoing, Buyer shall prevent unauthorized access to, or misuse of, the Software and related documentation by its employees or third parties by appropriate preventive measures, including safeguarding of any original data media and such back-up copy.
- 10.3. Restrictions. Except to the extent expressly provided herein or in the applicable Order Confirmation, the Buyer may not (a) copy, modify or adapt the Software; (b) prepare derivative works of the Software; (c) distribute, host, lease, sublicense, lend, give, transfer, assign or otherwise make all or any portion of the Software available to any third-party; or (d) reverse engineer, decompile or disassemble the Software or cause or allow discovery of the source code or underlying ideas or algorithms of the Software or attempt to do so. To the extent permissible by law, the Buyer waives any rights that it may have to do any of the foregoing.
- 10.4. Ownership. The Software is licensed to the Buyer, not sold. All right, title and interest in and to the Software, including any permitted copies and all copyrights, trade secrets, trademark, patent and other forms of proprietary and intellectual property rights, belong to Seller or its licensors. This Agreement does not convey to the Buyer any interest in or to the Software, but only a limited right of use revocable in accordance with the terms of this Agreement. All rights not expressly granted in this Agreement are reserved by Seller and its licensors. The Buyer shall not remove, obscure or modify any copyright, trademark or other proprietary or intellectual property rights notices contained in the Software.
- 10.5. Third Party Software. The Software may contain software licensed by one or more third parties ("Third Party Software"). Terms and conditions applicable to Third Party Software may be located within the Software's documentation and/or installation directory ("Third Party Terms"). Except as Seller may otherwise inform the Buyer in writing, the Third Party Terms give the Buyer at least the license rights granted above in this Section 10, and may provide additional license rights as to the Third Party Software, but only with respect to the particular Third Party Software to which the Third Party Terms apply. The Buyer is responsible for complying with all applicable Third Party Terms. To the extent any of the terms and conditions of this Agreement are prohibited by the terms of any Third Party Terms, the prohibited terms of this Agreement shall not apply to the particular Third Party Software. ALL THIRD PARTY SOFTWARE IS PROVIDED WITHOUT ANY WARRANTY FROM SELLER AND ITS LICENSORS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 10.6. No Maintenance. Seller has no obligation to provide maintenance or support for the Software under this Agreement, and may discontinue distribution of the Software at any time.
- 10.7. Export Controls. The Software may be subject to export controls under the U.S. export control laws, rules and regulations, and may be subject to the export regulations of other countries. The Buyer shall not export or re-export, directly or indirectly, the Software, unless the Buyer has complied with all applicable laws and has obtained appropriate authorization from the U.S. Commerce Department and/or any other relevant government authorities.
- 10.8. Government Users. If any user of the Software is an agency or department of the United States Government, the use, duplication, reproduction, modification, disclosure or transfer of the Software is restricted in accordance with FAR 12.212 for civilian agencies and DFAR 227.7202 for military agencies. The Software is a "commercial item" consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in FAR 12.212 and DFAR 227.7202, and the use of the Software is further restricted in accordance with the terms of this Agreement.

11. Limited Warranty and Warranty Disclaimer.

- 11.1. Goods. New goods and replacement parts are warranted to Buyer to be free of defects in materials or workmanship for a period of thirty days from shipment, normal wear and tear excepted. Wear parts are warranted to be free of defects in materials or workmanship for a period of thirty days from shipment.
- 11.2. Services. Seller warrants to Buyer that the Services to be provided, and the work performed resulting from or associated with the Services, will be performed by qualified personnel on a best effort basis, subject to such supervision and instructions as may be provided or imposed by Buyer, and will be of a quality reasonably expected of such qualified personnel. The warranty will be for thirty days from the date of provision of Services to the Buyer.
- 11.3. Software. Seller warrants to Buyer that the Software (excluding any Third Party Software) will operate substantially as described in the applicable documentation for a period of thirty days from initial shipment. Seller does not warrant that the operation of the Software will meet the Buyer's requirements or will be uninterrupted or error-free.
- 11.4. Warranty Claims.
 - 11.4.1. Buyer shall immediately notify Seller in writing of any warranty defects, and at Seller's request shall provide Seller with reasonable opportunity to make inspections or tests. Goods may not be returned to Seller without Seller's written permission. Buyer shall prepay freight and related costs of return from point of origin to Seller's works, and shall bear all risks of loss until the goods are delivered to Seller's dock. If, after inspection, goods or services are found to be conforming, Buyer shall pay all costs of return of the goods and reimburse Seller for Seller's expenses incurred in inspecting or testing the goods or services.
 - 11.4.2. No claims may be brought by the Buyer with respect to warranty defects after the expiration of the applicable warranty period. To the extent that applicable law or regulation requires a longer period than those set forth above in this Section 11, then such longer period shall apply.
 - 11.4.3. Seller's sole obligation for nonconforming Goods, Software or Services, and Buyer's sole remedy, shall be the repair or replacement, ex-works, of the nonconforming Goods, correction or replacement of the nonconforming Software, or re-performance of the

BIT Group
Terms and Conditions of Sale – North America
Effective as of May 2014

nonconforming Services, or, at Seller's option, refund of the purchase price for the applicable non-conforming Goods, Software or Services. In no case will Seller be responsible for any defects arising from use of the Goods, Software or Services deliverables other than for their intended purpose, or for alterations made by Buyer.

- 11.5. The warranties herein are made to the original Buyer only and are not transferable to any third party.
- 11.6. The foregoing warranties will not apply to non-Seller manufactured products, as identified on the applicable price list. To the extent permitted by law and Seller's agreements with the vendors of such non-Seller manufactured products, Seller hereby assigns and passes through, and agrees to assign and pass through, to Buyer any warranties received by Seller with regard to (i) the conformance of such products with the vendor's specifications; and (ii) such products' freedom from defects in materials and workmanship. If Seller is not able to pass through any such warranties to Buyer, Seller shall hold such warranties on behalf of Buyer and, in the event of a breach of such warranty, and if requested by Buyer, shall make claims under such warranties so that Buyer may benefit from their enforcement. The foregoing shall constitute Seller's sole obligation, and Buyer's sole remedy, with respect to any non-conformance with specifications or defects in any non-Seller manufactured products.
- 11.7. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SELLER HEREBY EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF SELLER HAS BEEN INFORMED OF SUCH PURPOSE.
12. Remaining Stock of Components. The components Seller purchases for the manufacture of an ordered product are considered to be ordered by order of Buyer. Buyer acknowledges that some components are special components that cannot be kept in inventory as stocks for general use or consumption and which are only available when minimum amounts are accepted. Should these components not be used or consumed for completion of the order after the preliminary or final ending of the contractual relationship, then Buyer is obligated to purchase the remaining stock from Seller [at the actual cost of materials / at the actual cost of materials plus administrative costs]. The contractual relationship for the custom made order is considered preliminarily ended if no new order for production is issued within 6 month.
13. Liability.
- 13.1. In no event will Seller's liability for unexcused delays in performance exceed 0.5% of the total amount owing under the relevant Order Confirmation per week for each week of delay, up to the overall limit set forth below.
- 13.2. In no event will Seller's liability for unexcused delays in performance exceed a limit of five percent (5%) of the value of the part of the Goods or Services the delivery of which is delayed.
- 13.3. IN NO EVENT WILL SELLER OR ITS AGENTS, OFFICERS, DIRECTORS, EMPLOYEES OR SUBCONTRACTORS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OR FOR LOSS OF ANTICIPATED OR ACTUAL REVENUES OR PROFITS ARISING IN CONNECTION WITH ANY TRANSACTION SUBJECT TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING TORT), NOR FOR ANY DIRECT DAMAGES EXCEEDING, IN THE AGGREGATE, THE TOTAL AMOUNT RECEIVED BY SELLER FOR THE GOODS OR SERVICES TO WHICH THE DAMAGES RELATE.
14. Intellectual Property. All intellectual property rights of Seller, whether previously existing or created in the course of providing Goods, Software or Services, and including but not limited to patents, patent applications, utility models, designs, copyrights, proprietary technical information and any other inventions, discoveries, ideas as well as any other know how ("Rights") related to the design, technologies, software, development or manufacturing parts or components of Goods or Software or performance of Services, shall remain the sole property of Seller, and, except as may be otherwise expressly agreed in writing by Buyer and Seller, no ownership of or license to, or other rights in, any Rights shall be conferred to Buyer, except that Buyer shall have a royalty-free, worldwide license to use the Rights to the extent required for Buyer to use the Goods or Services in accordance with the user documentation or other relevant instructions and, with respect to Software, subject to the additional terms and conditions set forth in Section 10 above; *provided*, that such licenses (including the Software license pursuant to Section 10) shall immediately terminate if Buyer shall breach its payment or other obligations with respect to the applicable Goods, Software or Services. Buyer agrees: (i) not to remove or alter any proprietary rights or other notices contained on or in any Goods; (ii) not to use any trademark or service mark of Seller without Seller's prior written consent; (iii) not to share any of Seller's price or product performance data with any third party without Seller's prior written consent; and (iv) not to reverse engineer, disassemble, or otherwise attempt to derive functional or design information or technical specifications from any of Seller's goods.
15. Responsibility for Regulatory Approval. Buyer represents and warrants to Seller that it has obtained or will obtain all necessary regulatory and other approvals for the manufacture, sale and use of the goods ordered. To the extent that there are any regulatory or other requirements pertaining to the manufacture, packaging or shipment of the goods, it shall be Buyer's responsibility to include them in the Specifications.
16. Force Majeure; Unavoidable Delays. Seller will not be liable for any delay or non-performance in the event and to the extent that such delay or nonperformance is beyond Seller's reasonable control (a "Force Majeure" event). Seller will inform the Buyer of the occurrence of any event of Force Majeure, its expected duration and cessation, respectively, as soon as reasonably practical. In the event that substantial performance of this Agreement becomes suspended as the result of an event of Force Majeure for a continuous period exceeding three months, then either party has the right to terminate the Agreement or the relevant Order Confirmation in respect of the unperformed part of the Agreement or Order Confirmation. Neither party will incur any liability to the other party as a result of cancellation pursuant to this paragraph other than the cancellation costs to be borne by Buyer as provided in Sections 5.1 and 5.2. Without prejudice to the generality of the foregoing provisions, the following events will be recognized as events of Force Majeure: operational breakdowns, failure or delay of delivery or short-falls on the part of suppliers, deficiencies in energy or raw materials, theft, road traffic difficulties, war, acts of terrorism, civil unrest, strikes, lock-outs and other general labor disputes, acts of government; natural disasters, exceptional weather conditions; accidents, fire, explosions and conditions of the nature described in Section 5.2.
17. General.
- 17.1. Jurisdiction; Litigation Expenses. The exclusive jurisdiction for all legal disputes lies in the state and federal courts in Orange County, California. Each of the parties hereby consents to the jurisdiction of such courts and to the making of service of process by certified mail return receipt requested, or by such other means as may be permitted under the rules of such courts. Each party agrees that it will not object to litigation in such courts on grounds of lack of venue, forum non conveniens or the like. In any action to enforce this Agreement, the prevailing party shall be entitled to recover all court costs and expenses and reasonable attorneys' fees, in addition to any other relief to which it may be entitled.
- 17.2. Choice of Law. This Agreement and any and all other legal relationships between the Buyer and Seller shall exclusively be governed by the laws of the State of California, without reference to its choice of law principles.

BIT Group
Terms and Conditions of Sale – North America
Effective as of May 2014

- 17.3. Severability. If any clause in these conditions is or becomes invalid or unenforceable, the invalid or unenforceable provision shall be deemed separated from the contract and the validity of the remaining terms and conditions shall not thereby be affected. The parties shall, to the extent possible, be deemed to have replaced the invalid clause by such valid clause which as closely as possible reflects the legal intent of the invalid clause.
- 17.4. Waiver. The failure to enforce at any time any of the provisions hereof shall in no way be construed to be a waiver of such provision or to affect either the validity of the Agreement or any part hereof, or Seller's right to enforce each and every provision in accordance with the terms of the Agreement.
- 17.5. Entire Agreement the terms, provisions, conditions and language herein constitute the parties' entire Agreement. Any inconsistent terms and conditions contained in any purchase order, invoice or other document shall not bind Seller.
- 17.6. The U.N. Convention of Contracts for the International Sale of Goods will not apply to this Agreement.
- 17.7. Assignment. Buyer may not assign or transfer this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Seller. Any assignment or transfer without such written consent shall be null and void. Buyer shall not without Seller's prior written consent delegate or subcontract any of its obligations hereunder to any other party.
- 17.8. Relationship of the Parties. Seller is and shall perform the Services and provide the Goods as an independent contractor of Buyer. Nothing contained in this Agreement or elsewhere shall be construed to create an agency, joint venture, partnership or similar relationship. This Agreement shall not create any contractual relations between Buyer and any third party and both parties agree that there are no intended third-party beneficiaries of this Agreement.
- 17.9. Notices. Except for Order Confirmations, which may be sent by local mail, facsimile transmission or electronically transmitted, all notices required or permitted under this Agreement must be in writing addressed to the authorized representative(s) of the other party. Notice will be deemed given (a) when delivered personally, (b) when sent by confirmed facsimile, (c) one day after having been sent by commercial overnight carrier specifying next-day delivery with written verification of receipt, and (d) three days after having been sent by first class or certified mail, postage prepaid.
- 17.10. Right to Assign Personnel. Seller shall have the sole right to determine which of its representatives or subcontractors, as applicable, shall be assigned to perform Services, and to replace or reassign such representative or subcontractors, as applicable, during the term of the Agreement. In addition, any Buyer-initiated delays may necessitate reassignment of personnel.
- 17.11. Confidentiality. Without limiting section 2.5 above, each party's obligations with respect to the other party's confidential information shall be as set forth in a separate non-disclosure or similar agreement.
- 17.12. Modifications. This Agreement may only be modified only in writing signed by both parties.
- 17.13. Headings. The headings in this Agreement are for convenience of reference only and shall not affect its interpretation.
- 17.14. Indemnification by Buyer. Buyer shall indemnify, defend and hold harmless Seller and each of its directors, officers, employees, stockholders, affiliates and agents from and against and in respect of any and all claims, losses, damages, costs, expenses, obligations, liabilities, charges, actions, suits, proceedings, deficiencies, interest, penalties and fines (including costs of collection, attorney's fees and other costs of defense, costs of enforcing indemnification provisions, and expenses of investigation) imposed on, sustained, incurred or suffered by or asserted against them, directly or indirectly, in respect of any product liability or other claim by a third party relating to any Goods or Services.