

AXION, LLC

TERMS AND CONDITIONS OF SALE

1. Governing Terms. These Terms and Conditions of Sale (“Terms”) apply to and govern the sale by Axion, LLC (“Axion”) of any and all products (“Products”) Axion sells to Buyer and the performance by Axion of any and all services (“Services”) Axion furnishes to Buyer, except as otherwise stated in Axion’s quote or as otherwise agreed in a written agreement signed by Axion. Axion offers to sell Products and Services solely pursuant to these Terms and any acceptance by Buyer is expressly limited to these Terms.

2. Prices. The prices for Products and Services are those contained in Axion’s quote or, if no prices are stated therein, in Axion’s standard price list. Unless the parties otherwise agree in writing, the prices for the Products and Services do not include any taxes, customs duties, brokerage fees, or costs of freight, shipping, packaging, labeling, storage or insurance, which will be paid by Buyer in addition to the prices for Products and Services.

3. Payment. All payments for Products and Services are payable on the terms stated in Axion’s quote. If no payment terms are stated therein, all payments for Products and Services are due 30 days from the date of invoice, unless otherwise agreed in writing by Axion. All amounts past due will incur a late charge of 1.25% per month.

4. Title; Delivery. Unless otherwise agreed in a written agreement signed by Axion, all Products are sold FOB, Freight Collect, at Axion’s facility. Title to, and risk of loss of, Products will pass to Buyer upon delivery to the carrier at Axion’s facility. Axion will use commercially reasonable efforts to deliver Products and Services on or before the scheduled shipping/delivery date thereof.

5. Breach. Any one of the following acts by Buyer will be a material breach of these Terms by Buyer: (a) Buyer fails to pay for any Products or Services when due; (b) Buyer fails to accept conforming Products or Services; (c) the filing of a voluntary or involuntary petition in bankruptcy against Buyer, Buyer’s insolvency, or an assignment for the benefit of creditors of Buyer; or (d) Buyer’s failure to provide adequate assurance of performance within ten (10) days after a justified demand by Axion. In the event of a breach, Axion, in addition to all other rights and remedies hereunder or at law or in equity and without liability to Buyer, may terminate its obligations by written notice to Buyer. Buyer will pay all costs, including attorneys’ fees, incurred by Axion as a result of the breach.

6. Limited Warranty. Axion warrants to Buyer that, from the date of delivery until the expiration date noted on the Products (or if no expiration date is noted, for period of one year from the date of delivery), Products sold by Axion will: (a) comply with any specifications agreed to by Axion in a signed writing, and (b) be free from defects in material and workmanship under proper use, service and conditions. In the event a Product fails to conform to this warranty during the warranty period, Axion, at its option, will replace the Product or credit Buyer the purchase price of the Product. This warranty constitutes Axion’s sole liability and obligation, and Buyer’s sole remedy, for any breach of warranty or other nonconformity of Products or Services. This warranty is exclusive and in lieu of all other warranties. Axion makes no other warranty, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose or non-infringement.

7. Limitation of Liability. Axion will in no event be liable to Buyer or any third party for consequential, incidental, indirect, exemplary or special damages, including lost profits, whether in an action based on contract, tort or other legal theory, arising from or related to any transactions hereunder. In addition, in no event will Axion’s total liability arising from or related to any transactions hereunder, whether based on contract, tort or other legal theory, exceed the total amount Buyer paid to Axion for the product or services giving rise to such liability, and the existence of multiple claims will not enlarge this limit.

8. Acknowledgment. Buyer acknowledges that Axion has set its prices and fees, and has agreed to sell Products and Services to Buyer, in reliance on the limitations of liability, disclaimer of warranties and exclusive remedies set forth

in these Terms, and that such provisions form an essential basis of the bargain between the parties, without which Axion would not have agreed to sell Products and Services to Buyer.

9. Indemnity. Buyer will defend, indemnify and hold harmless Axion and its members, managers, officers, employees and agents from and against any losses, damages, claims, liabilities and expenses, including attorneys’ fees, arising from or related to: (a) Buyer’s or Buyer’s customers’ use of any Products or Services; and (b) any failure by Buyer to perform any of its obligations under the Terms.

10. Intellectual Property. All products, designs, formulas, devices, software, data, processes, methods and any other items designed, developed or produced by Axion in connection with any Products or Services are the sole property of Axion and are not “works made for hire” or “commissioned works.” Axion retains all patents, copyrights, trade secrets and other intellectual property rights with respect to any design, formula, process or other technology used in or resulting from the development or production of Products or Services. Buyer will not have any right or license in or to any patent, copyright, trade secret or other intellectual property right not expressly granted by Axion in these Terms.

11. Confidential Information. All information Buyer receives or obtains from Axion that Buyer knows or should know is confidential to Axion, including pricing and trade secret information, will remain Axion’s confidential information. Buyer may not disclose such information to any third party or use such information except in connection with its use of the Products or Services.

12. Legal Compliance. Buyer will comply with all applicable laws, regulations and administrative rules governing the purchase, sale and use of Products and Services, including export and import laws.

13. Assignment. Buyer may not assign any of its rights or delegate any of its obligations under these Terms, whether voluntarily, by operation of law or otherwise, without Axion’s prior written consent, and any purported assignment or delegation will be null and void. Subject to the foregoing, these Terms will bind each party and its respective successors and permitted assigns.

14. Force Majeure. Axion will not be liable for any delay or failure by Axion to furnish Products or Services due to causes beyond its reasonable control, such as acts of God, fires, epidemics, pandemics, floods, riots, wars, terrorism, labor disputes, governmental actions, or the inability to obtain sufficient materials, labor, components, energy, services, facilities or transportation on commercially reasonable terms.

15. Waiver. Axion will not be deemed to have waived any of its rights or remedies under these Terms or applicable law unless the waiver is in a writing signed by Axion, and no waiver of a right or remedy will operate as a waiver of such right or remedy or any other right or remedy on any future occasion.

16. Governing Law; Venue. The laws of South Dakota will govern the validity, performance and construction of these Terms and any disputes arising from or relating to these Terms and the transactions contemplated hereunder. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to any Products or Services sold by Axion or any disputes relating thereto. All disputes will be subject to the exclusive jurisdiction of the state or federal courts in Minnehaha County, South Dakota, and Buyer consents to the personal and exclusive jurisdiction and venue of these courts.

17. Entire Agreement. These Terms constitute the entire agreement between Buyer and Axion with regard to the Products or Services and expressly supersede and replace any prior or contemporaneous agreements relating thereto. These Terms may not be superseded, cancelled or amended except in a writing signed by each party. If any provision of these Terms is determined to be invalid or unenforceable, such provision will be enforced to the extent possible and the remaining provisions will remain in full force and effect.