AIR LOGIC

TERMS AND CONDITIONS OF SALE

All references in these Terms and Conditions of Sale to "products" includes all tooling, product designs, plastic injected molded parts, contractual assembly of products, systems and all other items of every kind and nature, which are manufactured and/or distributed by Air Logic, a division of Knapp Mfg., Inc. ("Air Logic").

1. Application Disclaimer. **DO NOT USE AIR LOGIC PRODUCTS AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS.** Products sold by Air Logic are not designed, intended or approved for use in life support, implantable medical devices, nuclear, aircraft, safety or other equipment where malfunction of the products can reasonably be expected to result in personal injury, death, severe property damage or severe environmental harm. Where Buyer uses or sells products for use in such critical applications, such is at Buyer's own risk and Buyer agrees to defend, indemnify and hold harmless Air Logic from any and all damages, claims, suits and/or expenses resulting from such use.

2. Offer, Governing Provisions. This writing constitutes an offer or counteroffer by Air Logic to sell the products described herein ("products") or on the face hereof in accordance with these Terms and Conditions of Sale ("terms and conditions"). This Writing is not an Acceptance of Any Offer Made by Buyer, and Acceptance of this Offer is expressly conditioned upon the Buyer's Assent to These Terms and Conditions. Buyer will be deemed to have assented to these terms and conditions when, at Air Logic's option: Buyer shall have given to Air Logic (orally or in writing) specifications of quality and/or type of products, delivery dates, shipping instructions, instructions to bill, or the like, as to all or any part of the products described herein or on the face hereof; or the Buyer has received delivery of the whole or any part thereof; or the Buyer has otherwise assented to the terms and conditions hereof. No Additional Terms or Different Terms or Conditions Shall Be Binding Upon Air Logic Nor Can the Buyer's Acceptance Limit or Alter Air Logic's Terms and Conditions Unless Specifically Agreed To in Writing Signed by Duly Authorized Personnel of the Air Logic. Air Logic hereby Objects to Any Such Additional or Different Provisions Contained in Any Purchase Order or Other Communications from Buyer. Any document received from Buyer which contains terms and conditions conflicting with Air Logic's documents shall not become part of the contract; only those terms and conditions as specified in Air Logic's documents shall be binding, unless otherwise modified in writing and no implied terms and conditions shall be substituted for Air Logic's terms and conditions to resolve any conflict.

3. Limited Warranty. Air Logic warrants products manufactured and/or distributed by it to be free from defects in materials and workmanship for a period of ONE (1) YEAR from date of shipment, provided they have been installed and/or used as recommended, and have not been subjected to misuse, alteration, accident, abuse or unauthorized repair. If, within such period, any such products shall be proven to Air Logic's satisfaction to be defective, such products shall be either replaced or their price refunded, at Air Logic's sole option. Air Logic's obligation for non-performance, defective products, or any damage caused by its products or their use, and Buyer's exclusive remedy therefor, shall be limited to such replacement or refund at Air Logic's sole option and shall be conditioned upon Air Logic receiving written notice, together with a demand for such replacement or refund, within ONE (1) YEAR after the date of shipment of such products. Air Logic shall have no liability for labor or other costs incurred by Buyer in repairing, removing, installing, servicing or handling of any products, without the express written consent of Air Logic. This warranty gives Air Logic specific legal rights and Air Logic may have other rights which may vary from state to state. This exclusive remedy shall not be deemed to have failed its essential purpose under any circumstances so long as Air Logic is willing and able to replace defective products or refund the purchase price at Air Logic's sole option within the time period specified.

4. Disclaimers of Warranty and Liability. The foregoing warranties provided in section 3 are exclusive and in lieu of all other express and implied warranties (except of title) including, but not limited to, implied warranties of merchantability and fitness for a purpose. Air Logic does not warrant its products to be suited for any particular purpose. Any suggestions made by Air Logic concerning the product, its use, its performances, its production capabilities, quality requirements and/or suggestions with respect to design, engineering, use or the like, are to be construed as suggestions only and any and all specified intended uses should be confirmed by Buyer's independent testing. Any descriptions of the product given to Buyer by Air Logic is for the sole purpose of identifying it, is not part of the basis of the bargain, and does not constitute a warranty that the product shall conform to that description. The use of any sample in connection with the sale is for illustrative purposes only, is not part of the basis of the bargain and is not to be construed as a warranty that the product will conform to that sample. None of Air Logic's agents, employees or representatives have any authority to bind Air Logic to any affirmation, representation or warranty other than those stated herein. Air Logic shall not be subject to any other obligations or liabilities whatsoever with respect to this agreement, products manufactured and/or distributed by it or any undertakings, acts or omissions relating thereto.

It shall be the sole responsibility of Buyer and/or user to comply with all federal, state and local rules and regulations concerning the use of products described herein or on the face hereof and shall not be the responsibility of Air Logic.

5. Disclaimer of Consequential and Incidental Damages and Other Liability; Buyer's Indemnity. Air Logic's liability with respect to breaches of warranties shall be limited as provided in Sections 3 and 4 hereof. With respect to other breaches of this contract, Air Logic's liability shall in no event exceed the contract price. Air Logic shall not be subject to and disclaims: (a) Any other obligations or liabilities arising out of breach of contract, express or implied warranty, or under statute; (b) any obligations whatsoever arising from tort claims or arising out of other theories of law with respect to products sold or services rendered by Air Logic, or any undertaking, acts or omissions relating thereto; without limiting the generality of the foregoing, Air Logic specifically disclaims liability for the torts of negligence, misrepresentation, and strict liability; (c) all consequential, incidental and contingent damages whatsoever; and (d) all labor or other costs incurred in repairing, removing, installing, servicing or handling of any products.

Without limiting the generality of the foregoing, Air Logic specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, DAMAGES FOR LOST PROFITS OR REVENUES, loss of use of products or any associated equipment, cost of capital, facilities or services, down time, cost of recalls shut down or slow down costs, or for any other types of economic loss. All of the limitations and disclaimers contained in this Section 5 and in the rest of these terms and conditions shall apply to all claims of Buyer's customers or any third party.
Buyer shall indemnify Air Logic against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys’ fees and other costs of defending any action) which Air Logic may incur as a result of any claim by Buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Air Logic’s negligence.

AIR LOGIC’S PRICES ARE BASED ON THE POLICIES STATED HEREBIN WHICH LIMIT ITS LIABILITY. IF BUYER DESIRES AIR LOGIC TO PROVIDE A WARRANTY GREATER THAN THAT WHICH IS STATED ABOVE, THEN AIR LOGIC WILL ADJUST UPWARDS THE PRICE FOR THE PRODUCTS DESCRIBED HEREBIN OR ON THE FACE HEREOF TO REFLECT THE ADDITIONAL EXPENSE TO AIR LOGIC WHICH SUCH A WARRANTY OBLIGATION COULD CAUSE. BUYER ACKNOWLEDGES THAT AIR LOGIC’S PRICE IS LOWER THAN IT OTHERWISE WOULD BE BECAUSE OF AIR LOGIC’S LIMITED WARRANTY AND DISCLAIMER OF TORT LIABILITY, AND SPECIFICALLY BECAUSE OF AIR LOGIC’S DISCLAIMER OF THE TORTS OF NEGLIGENCE, MISREPRESENTATION, AND STRICT LIABILITY. BUYER FURTHER ACKNOWLEDGES THAT THE LOWER CONTRACT PRICE GIVEN IN EXCHANGE FOR SUCH DISCLAIMERS FORMS PART OF THE BASIS OF THIS BARGAIN.

No waiver, alteration or modification of the foregoing shall be valid, unless made in writing and signed by an executive officer of Air Logic. Air Logic reserves the right to alter product designs and materials, when conditions warrant, without notice.

6. Patents, Trademarks and Copyrights. Buyer assumes all liability for patent, trade mark and copy right infringements when products are made to Buyer’s specifications.

7. Mandatory Arbitration. The mandatory arbitration provisions of these terms and conditions shall be liberally construed so as to require the arbitration of all claims and disputes of every kind and nature, whether arising out of contract, tort, statute, common law or any other theories of liability and/or recovery in law and/or equity.

Without in any way limiting the above expressed intent, all “Disputed Claims” shall be resolved by mandatory arbitration and shall include, but not be limited to: any differences, claims, matters in dispute, or controversies of every kind or nature as to the existence, construction, validity, interpretation, meaning, performance, non-performance, enforcement, operation, breach, continuance, termination, misrepresentations (both in its formation or its execution), compliance with Federal, State or Local statutes, ordinances, or regulations and any other theories of liability and/or recovery in law and/or equity, arising from or related, either directly or indirectly, to these terms and conditions, the contract of which they are a part, the matters discussed herein.

All Disputed Claims shall be submitted by the parties to arbitration in accordance with this Agreement and the Wisconsin Arbitration Act, Chapter 788 of the Wisconsin Statutes, if that Act is applicable, and if not, in accordance with the provisions of the United States Arbitration Act, 9 U.S.C. §1 et. seq., or any revisions or recreations of those Acts. In the event of arbitration, each party shall select an arbitrator within thirty (30) days c. submission of any Disputed Claims to arbitration. If an arbitrator timely selected by a party is unable, for any reason, to serve until the making of a decision or an award, that party may name a successor arbitrator. If either party fails to designate an arbitrator within the thirty (30) day period, that party’s right to name an arbitrator (or any successor arbitrator) is forfeited, and any arbitrator timely named shall select a second arbitrator. The first two arbitrators shall then [within thirty (30) days of the selection of the last of them] jointly select a third arbitrator, the three arbitrators of which shall constitute the “Arbitration Panel”. If the two arbitrators to be selected by the parties are unable to agree upon the selection of a third arbitrator, the third arbitrator shall be supplied by the Circuit Court for Racine County, Wisconsin. Each party shall reach an agreement with the arbitrator named by that party on the compensation to be paid to that arbitrator and shall disclose that agreement to the other party and the other arbitrator. The Arbitration Panel shall render its final decision within six (6) months of the selection of the Arbitration Panel. The Arbitration Panel shall conduct all proceedings in Racine, Wisconsin.

In the event a party forfeits its right to select an arbitrator, then the second arbitrator shall be paid by the forfeiting party upon the same terms as the non-forfeiting party compensates its appointed arbitrator. The parties shall each pay one-half (1/2) of the fees and expenses of the third arbitrator as billed by that arbitrator to the parties.

Notwithstanding any other provision to the contrary, the parties agree and consent to the taking of depositions and the use of discovery in accordance with the Federal Rules of Civil Procedure and the Wisconsin Statutes. Furthermore, an aggrieved party prior to the naming of the Arbitration Panel as provided for in this Agreement, may petition the Circuit Court for Racine County, Wisconsin, for such temporary equitable relief as the court may determine is appropriate under the circumstances to maintain the status quo until the appointment of the Arbitration Panel as provided for herein.

After submission of the Disputed Claims to arbitration, but not less than ten (10) business days prior to commencement of the arbitration proceeding in which the Arbitration Panel will finally and fully resolve the Disputed Claims, each party shall provide the other party with a final confidential written settlement offer which shall not be disclosed to the arbitrators prior to the arbitration proceeding. If no settlement is reached, the “Prevailing Party”, as defined below, shall be entitled to reimbursement of its reasonable legal fees and expenses and its share of all fees and expenses paid by the arbitrators as part of its final award. In addition to the resolution of the Disputed Claims the Arbitration Panel shall also determine which of the parties, if any, shall be deemed the “Prevailing Party”. A party shall be deemed the “Prevailing Party” only if the award rendered by the arbitrators is more favorable to the Prevailing Party than the Prevailing Party’s final written settlement offer to the other party, which shall only be disclosed to the arbitrators after they have reached their final decision with respect to the Disputed Claims. The Arbitration Panel may also determine that neither party is a Prevailing Party for purposes of the standard set forth in this subparagraph.

The arbitrators shall be prohibited from awarding punitive damages even if a party would have otherwise been entitled to recover such damages under Federal, State or Local statutes, ordinances or regulations absent this Agreement. The arbitrators shall prepare detailed findings of fact and conclusions of law when rendering their decision.

8. Final Agreement. This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions of their agreement. Any subsequent modification or amendment to it may be made only in writing signed by both parties hereto. This writing and these terms and conditions shall be governed by and construed according to the internal laws of the State of Wisconsin.

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