

## **SECOR Standard Terms and Conditions for Sale of Goods**

These Standard Terms and Conditions for the Sale of Goods, with Definitions ("Terms"), apply to all quotes, bids, or sales of products and goods (the "Goods") by Scheele Engineering Corporation ("SECOR"). The price, quantity and Delivery Location (as defined below) for the Goods may be separately agreed upon and/or set forth in a quote or other separate writing delivered by SECOR, an Order issued by the applicable customer ("Buyer") and accepted by SECOR in some other communication between SECOR and Buyer. Such agreed price, Delivery Location and quantity, together with these Terms, shall be incorporated into any transaction with SECOR ("Agreement"), including to the extent context allows, for any Services rendered or to be rendered by SECOR.

### **DEFINITIONS**

**In these Terms, the following definitions shall apply:**

**"Contract:"** the integrated Agreement between SECOR and Buyer for the purchase of Goods, rental of Equipment, and/or provision of Services, which may consist of the Purchase Order, Invoice, Rental Agreement and/or a Service Agreement or other agreement, and these Terms.

**"Buyer" or "Customer:"** An individual or entity doing business with SECOR, e.g., by purchasing Goods as defined herein, or pursuant to an Order or Purchase Order, and paying SECOR pursuant to an Invoice, renting equipment pursuant to a Rental Agreement and/or receiving services pursuant to a Service Agreement, or other contract.

**"Equipment:"** the equipment rented pursuant to a Rental Agreement.

**"Goods"** means the goods purchased or agreed to be purchased by Customer from SECOR, whether SECOR Manufactured Goods as defined below, or by other parties who were the original manufacturer, but such goods are resold by SECOR, pursuant to an Order or Purchase Order, and as defined in the Uniform Commercial Code as adopted in Texas.

**"Purchase Order" or "Order"** means the written agreement placed by Buyer and accepted by SECOR that describes the type and quantity of goods and/or a description of the Services purchased by Buyer that shall be subject to these Terms.

**"Quotation"** means a written quotation of prices, rates and other commercial terms relating to the purchase of Goods, rental of Equipment, and/or provision of Services provided to Buyer by SECOR that shall be subject to these Terms;

"**SECOR**" means Scheele Engineering Corporation d/b/a "SECOR" with its principal address at 17321 Groeschke Road, Houston, Texas 77084;

"**SECOR Manufactured Goods**" means HDPE fittings and other Goods fabricated by SECOR.

"**Services**" means services to be performed by SECOR, for pay, pursuant to a Services Agreement. It does not include incidental advice or service provided in connection with the sale of Goods or rental of Equipment for which there is not a line item charge for Services.

"**Specifications**" means the fabrication specifications agreed upon by the parties for the fabrication or delivery of Goods.

1. **Terms of Agreement Prevail Over Buyer's Purchase Order.** The parties intend solely for the express terms and conditions contained in this Agreement to apply. In the event of a conflict between these Terms and any term or condition in any other document, website, order or communication, these Terms shall control. Any terms and conditions which seek to add to these terms in any SECOR Agreement, including any terms or conditions stated in an Order or website, shall have and be given no effect. These Terms supersede all prior oral or written agreements, proposals, discussions, correspondence, representations, warranties and covenants. No course of prior dealings, acceptance or acquiescence in a course of performance and no usage of the trade shall be relevant to supplement, explain or modify these Terms. All representations, promises, warranties or statements by an agent or employee of SECOR that differ in any way from these Terms shall be given no effect or force, and no waiver or alteration of Terms shall be binding unless in writing signed by an authorized SECOR representative. Notwithstanding the foregoing, if SECOR and Buyer have separately negotiated, agreed to and entered into a separate agreement signed by both parties ("Separate Agreement"), such Separate Agreement shall control over any conflicting provision, language, clause or condition in these Terms, if such Separate Agreement so states.

## 2. **Ordering Procedure.**

2.1 **Purchase Orders.** By issuing an Order for Goods to SECOR, Buyer makes an offer to purchase such Goods pursuant to these Terms.

2.2 **Acceptance, Rejection and Cancellation of Purchase Orders.** SECOR has no obligation to accept any Order. However, SECOR may accept an Order (whether submitted by Buyer or via acceptance of a bid or quote) by

confirming the Order in writing or by delivering the applicable Goods to Buyer, whichever occurs first. SECOR may reject or cancel an Order, which it may do in its sole discretion, without liability or penalty, and without constituting a waiver of any of SECOR's rights or remedies hereunder.

2.3 **Rush Orders**. On a case-by-case basis, SECOR, in its sole discretion, shall determine whether each order is a regular or rush order; if a rush order, SECOR shall determine pricing accordingly based on the unique circumstances of such order.

2.4 **Cancellation or Modification**. Upon acceptance of an Order, Buyer shall be obligated to pay SECOR such quantities of Goods specified in such Order. Cancellation or modification of all or part of any Order is a repudiation and material breach of contract, and subject to SECOR's prior written consent or terms for cure, if cure is possible, in each instance. SECOR shall be under no obligation to demand or accept retraction of a repudiation. Except and unless SECOR determines otherwise in its sole discretion, if SECOR allows a cancellation or modification, then Buyer agrees to pay to SECOR all expenses incurred and damage sustained by SECOR as a result of the cancellation or modification, consistent with, but not limited to, remedies available herein under Paragraphs 10.2 and 10.3.

2.5. **Taxes**. Taxes, duties or other fees due or levied on the rental or sale of any Goods, Services or Equipment are excluded from the purchase price, but are Buyer's sole obligation regardless whether accounted for in an Order.

### 3. **Shipment, Delivery, Acceptance and Inspection**.

3.1 **Shipment**. On a case-by-case, per-Order basis, the parties shall select the shipment method and carrier for the Goods. In its sole discretion and without liability or penalty, SECOR may make partial shipments of Goods to Buyer, unless otherwise prohibited in writing. Each shipment shall constitute a separate sale, and Buyer shall pay for the Goods shipped in accordance with the payment terms specified in these Terms or per Buyer's contract with SECOR, regardless whether such shipment is in whole or partial fulfillment of an Order. Buyer agrees to use first-in-first-out inventory practices with respect to the Goods it purchases from SECOR.

3.2 **Delivery**. Unless otherwise agreed in writing by the parties, SECOR will, at Buyer's cost and expense, deliver the Goods at the location specified in the Order (the "Delivery Location"), using SECOR's standard methods for packaging and shipping. Buyer shall be responsible for all freight charges unless otherwise specified. SECOR shall have completed its performance with reference to physical

delivery of Goods or Equipment when they are delivered to Buyer at SECOR'S address, or when they are delivered to a common carrier. Any delivery date or time stated in a Purchase Order is an estimate and not a covenant, condition or obligation. SECOR shall use commercially reasonable efforts to deliver all Goods within a reasonable time consistent with nature, facts and circumstances of the Order. SECOR shall not be liable for any loss, damage or expense caused by any delivery delay, and no such delay shall entitle Buyer to terminate or rescind a transaction or Agreement. All SECOR deliveries must be unloaded within two (2) hours of arrival at Delivery Location. SECOR, in its sole discretion shall charge Buyer an hourly rate appropriate in the circumstances for every hour beyond the maximum time necessary to unload the Goods, and such charge shall be invoiced in due course. If Buyer does not take delivery of the goods within a reasonable time after they are made available for delivery, SECOR may store and insure the Goods at Buyer's expense, or declare and pursue remedies for breach of contract, with SECOR entitled to all consequent damages and costs.

**3.3 Transfer of Title and Risk of Loss.** (a) Title to Goods shipped under any Order passes to Buyer upon Buyer's payment in full for the Goods; (b) Risk of loss or damage passes to Buyer upon delivery to the carrier.

**3.4 Inspection.** Consistent with Paragraph 6.3 below, if goods have not already been inspected by Buyer before Buyer has signed an Agreement with SECOR, Buyer shall notify SECOR within two business days after delivery ("the Inspection Period") if the Goods are non-conforming or apparently defective (as defined below). Such notice shall be in writing and describe in reasonable detail the nature of the non-conformity or apparent defect. Failure of such notice to be delivered to SECOR within the Inspection Period shall constitute conclusive and definitive proof that the Goods were conforming and had no apparent defects ("Inspection Period"). If Buyer discovers any apparently Nonconforming Goods, Buyer must request an authorization from SECOR to return the Nonconforming Goods (the "Return Material Authorization" or "RMA."). For Buyer to receive a RMA, Buyer shall provide SECOR with the following information before expiration of the Inspection Period: (a) the part number or description of the Good, (b) the job or Order number, (c) the quantity of each Good to be returned, and (d) a detailed description of all perceived defects and apparent nonconformities. Any such defects and nonconformities that are not so specified shall constitute an intentional waiver by Buyer, and such Goods shall be deemed to have been accepted unconditionally by Buyer. Upon Buyer's receipt of the RMA from SECOR, Buyer shall ship such items for return of the Goods to SECOR within the number of days specified by SECOR in the RMA, and in accordance with the RMA. If Buyer timely requests a RMA, and returns the Nonconforming Goods to SECOR in accordance with the RMA, SECOR shall determine, in its sole discretion, whether the Goods are Nonconforming Goods. If following receipt of the Goods in accordance with a

RMA, SECOR then determines that such Goods are Nonconforming Goods, SECOR, in its sole discretion, shall either: (i) replace such Nonconforming Goods with conforming Goods; or (ii) refund to Buyer such amount paid by Buyer to SECOR for such Nonconforming Goods. Buyer shall ship, at SECOR's request and expense, all Nonconforming Goods to SECOR's designated location. If SECOR exercises its option to replace Nonconforming Goods, SECOR shall ship to the Delivery Location, at SECOR's expense and risk of loss, the replacement Goods. Consistent with Paragraph 6.3 below, THE REMEDIES SET FORTH IN THIS SECTION 3.4 ARE BUYER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS, SUBJECT TO BUYER'S RIGHTS UNDER SECTION 6.3 REGARDING ANY SUCH GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 3.4. "Nonconforming Goods" means any goods received by Buyer from SECOR pursuant to an Order that: (A) do not conform to the Goods listed in the applicable Order; (B) do not conform to the Specifications; or (C) exceed (and then only to the extent the goods exceed) the quantity of Goods ordered by Buyer pursuant to an Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of these Terms or any Agreement between SECOR and Buyer.

#### **4. Price and Payment.**

4.1 **Price. Based on quoted prices.** Buyer shall purchase the Goods from SECOR at the price (that may fluctuate) as set forth in the Order, or if no prices are set forth in the Order at SECOR's then-current list or otherwise stated price for such Goods ("Prices") to be determined by SECOR.

4.2 **Credit and Payments.** Before delivery of Goods, Equipment or performance of any Services, and at any time thereafter in SECOR's sole discretion, upon SECOR's request, Buyer shall promptly provide SECOR, and hereby authorizes SECOR to obtain from Buyer or any third party, such credit information and documentation as SECOR may reasonably require to determine Buyer's creditworthiness. If at any time, in the sole opinion of SECOR, SECOR perceives Buyer's financial responsibility or stability to be impaired or unsatisfactory, or Buyer fails to provide requested financial or credit information, SECOR may deem itself insecure and may suspend deliveries or performance, or place Buyer on a cash-in-advance status until arrangements are made for security satisfactory to SECOR or, at SECOR's option, until all outstanding amounts are paid, and Buyer completes a new credit application and a new customer form to SECOR's satisfaction.

4.3 **Shipping Charges, Insurance and Taxes.** All Prices are exclusive of, and Buyer is solely responsible for and shall pay all taxes, levies, imposts, duties, deductions, charges, fees or withholdings imposed, levied, withheld or assessed

by any governmental authority, with respect to, or measured by, the manufacture, sale, shipment, use or Price of the Goods (including interest and penalties thereon); provided, however, that Buyer shall not be responsible for any taxes imposed on, or with respect to, SECOR's income, revenues, gross receipts, personnel or real or personal property.

4.4 **Payment Terms**. Buyer shall pay to SECOR all invoiced amounts within thirty (30) days from the date of such invoice, or payment in full shall be required before delivery, as the case may be or as specified in the Order. Buyer shall make all payments in US dollars by credit card, ACH or wire transfer. If SECOR accepts payment via credit card or other payment card, Buyer hereby agrees to pay an additional 3% of the amount of such payment.

4.5 **Late Payments**. Buyer shall pay interest on all late payments calculated daily and compounded monthly, at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Buyer also shall reimburse SECOR for all reasonable costs incurred by SECOR in collecting any late payments, including enforcement costs arising from in-house efforts, and/or actual attorneys' fees and costs. In addition to all other remedies available hereunder, pursuant to any Agreement to which SECOR and Buyer are parties, or at law (which SECOR does not waive by the exercise of any rights arising by these Terms), if Buyer fails to pay any undisputed amounts when due, SECOR may suspend the delivery of any Goods with no continuing obligation of any kind by SECOR to Buyer.

4.6 **No Set-off Right**. Buyer shall not have, and acknowledges that it does not have, any right, by these Terms, under any Agreement, or any Order, or any other agreement, or under law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to SECOR. SECOR shall not accept returned goods as payment for any sum unless pursuant to Paragraph 3.4 above and in the context of agreed Non-Conforming Goods.

## 5. **Term; Termination**.

5.1 **Termination**. In addition to any remedies that may be provided hereunder or in any Agreement to which Buyer and SECOR are parties, SECOR may in its sole discretion terminate an Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due; (ii) has not otherwise performed or complied with any of these Terms or Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**5.2 Effect of Expiration or Termination.** Any termination automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by SECOR. Market fluctuations are never grounds for termination, nor grounds for Buyer to defend non-performance, breach or repudiation of a contract. Regarding any Goods still in transit upon a termination by SECOR, SECOR, in its sole discretion, may require that all sales and deliveries of such Goods be made on either a cash-only or certified-check basis.

## **6. Limited Warranty.**

**6.1 Exclusive Limited Product Warranty.** SECOR warrants to Buyer designated on the Purchase Order received by SECOR and any subsequent purchaser (collectively, "Buyer") of any product manufactured by SECOR ("Product") for a period of one (1) year that the Product shall be free from defects in materials and workmanship ("defect"). SECOR further warrants to Buyer for the period of one (1) year that the use or sale of the Product will not infringe on the claims of any United States patent covering the Product itself. The warranty period specified in the immediately preceding sentence for each Product shall be one (1) year from the date of SECOR invoice to the original Buyer for such Product. SECOR does not warrant against patent infringement if the Product is used in combination with any other product or material or used in the process of manufacturing any other product or material. This provision constitutes SECOR's sole and exclusive warranty ("Limited Warranty"). This Limited Warranty shall not cover any Product subjected to misuse or misapplication due to common negligence or accident, or to the use or installation of the Product in, or affixing (joining by any means) the Product to itself or other goods, or incorporating the Product into any other good or product by Buyer or agent of Buyer.

## **6.2 Warranty Limitations.**

A. The Limited Warranties exclude any Good that (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by SECOR; or (b) have been reconstructed, repaired or altered by anyone other than SECOR or without SECOR's express, written authorization.

B. SECOR makes no express warranty for good manufactured by other parties who were the original manufacturer, but such goods are resold by SECOR. SECOR will use reasonable commercial efforts to "pass through" to Buyer the benefits of any manufacturer's warranties with respect to such Goods, if any.

SECOR shall not be responsible for any expenditure of money, time, labor or resources proximately caused by breach of warranty for such goods (including but not limited to expenses for de-installation, re-installation, return or re-delivery). Goods manufactured by other parties who were the original manufacturer, ARE PURCHASED AS IS, WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED. SECOR SPECIFICALLY DISCLAIMS (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY AND (B) IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

C. SECOR warrants that its Services will be provided in a good and workmanlike manner in accordance with a Purchase Order. This warranty is for the benefit of Buyer only and is not assignable or transferrable to any other party. Buyer's sole remedy for breach of this warranty will be for SECOR, at its SECOR's discretion, to re-perform the Service or refund the purchase price paid for such Service. Buyer shall notify SECOR in writing stating with reasonable detail the nature of the alleged breach of this warranty within ten (10) days of the time Buyer knew or should have known of a perceived breach. Except as stated herein, SECOR shall not be responsible for any expenditure of money, time, labor or resources proximately caused by breach of this warranty. SUBJECT TO THE FOREGOING, SECOR'S SERVICES ARE PROVIDED WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED WITH ALL OTHER RISKS BORNE BY Buyer.

**6.3 Buyer's Exclusive Remedy.** Consistent with Paragraph 3.4. above, and notwithstanding any other provision of these Terms, this Section 6.3 contains Buyer's exclusive remedy for a breach of warranty. Buyer's remedy under this Section 6.3 is conditioned upon Buyer's compliance with its obligations under this Section 6.3. During a warranty period, regarding any Goods alleged to be in breach of Section 6.1: (a) Buyer shall notify SECOR, in writing, of any alleged claim or defect within ten (10) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable warranty period); (b) Buyer shall obtain a Return Material Authorization in accordance with Section 3.4 and ship, at SECOR's request and expense, such allegedly defective Goods to SECOR's designated location for inspection and testing by SECOR; (c) if SECOR's inspection and testing reveals that such Goods are defective and any such defect has not been caused or contributed to by any of the factors described under Section 6.1 above, then SECOR, in its sole discretion and at its expense, shall repair or replace such defective Goods; and (d) SECOR shall ship to Buyer, at SECOR's expense, the repaired or replaced Goods to the Delivery Location. THIS SECTION 6.3 SETS FORTH BUYER'S SOLE REMEDY AND SECOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN THIS SECTION 6.

**6.4 DISCLAIMER OF OTHER WARRANTIES; NON-RELIANCE.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 6 (A) NEITHER SECOR NOR ANY PERSON ON SECOR'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED; AND (B) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SECOR, OR ANY OTHER PERSON ON SECOR'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 6.

## **7. Limitation of Liability.**

**7.1 NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES.** IN NO EVENT SHALL SECOR OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SECOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**7.2 MAXIMUM LIABILITY FOR DAMAGES.** IN NO EVENT SHALL SECOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SECOR PURSUANT TO THE APPLICABLE ORDER GIVING RISE TO THE CLAIM.

**7.3 ASSUMPTION OF RISK.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE RELATED TO THE USE OF SUCH GOODS.

7.4 **INDEMNIFICATION.** For any and all claims, actions, suits, or other proceeding (collectively "Proceeding") brought or threatened against SECOR by Buyer or by any third parties, Buyer hereby indemnifies SECOR, its officers, employees and agents, against and all costs, expenses, damages and liabilities, including in-house or outside counsel attorney's fees, other professional fees and costs, relating thereto where such Proceeding has arisen out of, results from, or is connected with Buyer's purchase or use of Goods or Equipment, or SECOR's provision of Services. Buyer shall give SECOR written notice immediately upon constructive or actual notice to Buyer of any claim threatened or asserted against Buyer for any injury allegedly arising from or related to Buyer's use of Goods or Equipment, or SECOR's provision of Services,

8. **Intellectual Property Rights.** Buyer acknowledges and agrees that any intellectual property rights that may relate to the manufacturing of the Goods are the sole and exclusive property of SECOR or its third party grantees or licensors, and Buyer shall not acquire any ownership interest in any of SECOR's intellectual property rights hereunder or under any Agreement with SECOR or otherwise. Any goodwill that may be derived from the use by Buyer of SECOR's intellectual property rights inures to the benefit of SECOR or its third-party licensors. Without limiting the foregoing, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by SECOR in connection with its manufacture, sale or distribution of the Goods, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto are owned by SECOR or its affiliates, and Buyer has no right, title, or interest in or to any such tooling.

9. **Confidentiality.** All non-public, confidential, or proprietary information of SECOR, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that SECOR may disclose to Buyer, whether disclosed intentionally, inadvertently, orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with these Terms or any SECOR Agreement, is confidential, and may not be disclosed or copied unless authorized in advance by SECOR in writing. Upon SECOR's request, Buyer shall promptly return all confidential documents and other materials received from SECOR. SECOR will be entitled to injunctive relief for any violation of this Section 9, without having to post bond or establish the insufficiency of a remedy at law. This Section 9 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party if such third party had rightful, authorized access.

## 10. **Seller's Remedies.**

10.1. **Specific Performance.** Buyer acknowledges Seller is not an original equipment manufacturer, and that the specially ordered, pre-owned, used or refurbished Goods, as the case may be and sold hereunder, are unique, not fungible, and without readily available substitutes or other buyers. Therefore, Buyer acknowledges that money damages alone could be an inadequate remedy for Seller in the event of Buyer's threatened or actual material breach or repudiation of these Terms or a SECOR Agreement. Without prejudice to any of Seller's other rights and remedies, Seller shall be entitled to equitable relief (including, without limitation, a decree of specific performance or injunctive relief) concerning any threatened or actual material breach or repudiation of this Agreement or these terms by Buyer. The Parties expressly agree and intend this stipulation definitively to demonstrate irreparable harm should Seller seek injunctive relief to obtain payment and to require Buyer to take delivery at Buyer's expense. The Parties further expressly agree and intend that the Uniform Commercial Code ("UCC") as adopted in the Texas, does not limit or displace any law and equity principles at common law, but instead that for purposes of this Agreement and these terms, such common law principles shall supplement the Texas Business and Commerce Code or any other codification in Texas of the UCC.

10.2 **No Duty to Mitigate Damages.** Buyer hereby waives any duty of SECOR to mitigate or attempt to mitigate damages in the event of Buyer's breach, anticipatory breach, or repudiation of this Agreement or terms. In such event, SECOR shall have no duty to seek from Buyer, or offer Buyer any opportunity to effect, a retraction of a repudiation. Material breach or repudiation by Buyer shall terminate any obligation by SECOR to Buyer and SECOR shall be entitled to any and all rights and remedies at law, equity or by statute.

10.3. **Lost Volume Seller.** Buyer hereby acknowledges, stipulates and agrees as follows: (a) SECOR is a "lost-volume seller;" (b) SECOR does not have an unlimited supply of standard-priced goods; (c) in the event of breach and non-performance by Buyer, SECOR would have made other sales in the ordinary course of the SECOR's business, despite the buyer's breach; (d) SECOR shall not be deprived of the profit from such additional sales; (e) the breaching Buyer shall not be permitted to count the proceeds from SECOR's additional sales in mitigation; (f) SECOR will not be made whole by the resale of Goods or market price differentials, which are inadequate for compensating SECOR in accordance with UCC 2-708(1); Buyer's breach shall be deemed to have reduced SECOR's total number of sales as derived and contemplated in UCC 2-708(2).

## 11. **Miscellaneous.**

11.1 **Relationship of the Parties**. The relationship between SECOR and Buyer is solely that of vendor and vendee, and are independent contracting parties.

11.2 **Survival; Statute of Limitations**. Any provision that, in order to give proper effect to its intent, should survive such expiration or termination, including, without limitation, Section 3.4, Section 4, Section 6 and Section 7, will survive the expiration or earlier termination of any SECOR Agreement.

11.3 **Severability**. If any of these Terms or provision of a SECOR Agreement are invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of these Terms or such Agreement, or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify these Terms or such Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated thereby be consummated as originally contemplated to the greatest extent possible.

11.4 **Right to Manufacture and Sell Competitive Goods**. Nothing in these Terms or any SECOR Agreement limits SECOR's right to manufacture, sell, distribute or preclude SECOR from manufacturing, selling, or distributing goods to any person or entity, or from entering into any agreement with any other person or entity related to the manufacture, sale or distribution of the Goods, and other goods or products that are similar to or competitive with the Good or with Buyer's business.

11.5 **Waiver**. No waiver under these Terms or any SECOR Agreement is effective unless it is in writing and signed by an authorized representative of SECOR. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from these Terms or a SECOR Agreement: (a) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition hereunder or in any SECOR Agreement; or (b) any act, omission or course of dealing between the parties.

11.6 **Assignment**. Buyer may not assign any of its rights or delegate any of its obligations under any SECOR Agreement without the prior written consent of SECOR. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under these Terms or a SECOR Agreement.

11.7 **Force Majeure.** SECOR's performance hereunder is subject to postponement or cancellation, in its sole discretion, for any cause beyond its reasonable control. This provision does not exclude, but rather augments, application of the doctrine of impracticability at common law or under the UCC, e.g., § 2-615, entitled "Excuse by failure of presupposed conditions."

11.8 **Successors and Assigns.** These Terms and any SECOR Agreement are binding on and inure to the benefit of the parties and their respective permitted successors and permitted assigns.

11.9 **Business-to-Business; Transaction Between Merchants.** The Parties to any SECOR Agreement agree they are Merchants under the UCC; no transactions with SECOR are a consumer transaction, and the Parties hereby expressly exclude from these Terms or any SECOR Agreement, or the understandings of the Parties, any consumer protection law, statute or regulation.

11.10 **Entire Agreement / Modifications.** These Terms as they may appear in any SECOR Agreement constitute the complete understanding and intent of the parties concerning the subject matter hereof, and supersede all prior understandings, negotiations or offers, written or oral. These Terms as they may appear in any SECOR Agreement may be amended only in writing, signed by an authorized representative of SECOR. Buyer hereby represents that it has read and understands every word and each provision of this Agreement and has had ample time to ask questions and to seek legal counsel if before signing this Agreement, Buyer had any questions about any aspect of this Agreement. Buyer shall not insert or attempt to insert any additional or different terms pertaining to the sale of the products and/or services hereunder. Buyer agrees that no such attempts by Buyer can be construed as SECOR's acceptance of any additional or different terms. Any purported changes, alterations, modifications, amendments, or additions to this Agreement that do not precisely fulfill this requirement are not valid. The provisions and language of this Agreement shall be given their fair meaning shall not be strictly construed against either party.

11.11. **Attorneys' Fees and Administrative or other Costs.** Buyer shall reimburse SECOR for all costs and expenses SECOR incurs (including but not limited to expert witness fees, actual attorneys' fees, or collection agency or any other enforcement fees) in its efforts to enforce these Terms as they may appear in any SECOR Agreement, including to recover damages for breach of contract, or to collect any amounts due SECOR hereunder. Regardless whether SECOR has outside counsel or in-house agent and/or a non-attorney represent it in a dispute, mediation, arbitration, or litigation, SECOR shall recover from Buyer as an uncontested element of damage, reasonable attorneys' fees and cost incurred to

have outside counsel review and/or help SECOR prepare material for or to engage in such proceeding, as if outside counsel were of record in such proceeding.

11.12. **Dispute Resolution.** [SECOR's Dispute Resolution Policy](#) applies and are hereby made a part of these Terms and all SECOR Agreements

11.13. **Notice.** Any required notices shall be provided in writing to Buyer at the address or by email on record with SECOR or as may be set forth in this Agreement, and to SECOR by email to [info@secoronline.com](mailto:info@secoronline.com), or by overnight courier to Scheele Engineering Corporation, c/o Evan Scheele, 17321 Groeschke Road, Houston, TX 77084, or to such other address as either party may substitute by written notice to the other.

11.14 **Counterpart Signatures.** SECOR Agreements may be signed electronically or otherwise, in counterparts, and an electronically transmitted copy of an original signature shall be deemed the equivalent of an original signature.