5. FORCE MAJEURE

MANUFACTURER shall not be held responsible for any delay or failure to perform its obligations hereunder in whole or in part due, directly or indirectly, to matters outside of MANUFACTURER’s control, including, without limitation, war, acts of God, labor strikes, lockouts, floods, acts of terrorism, municipal or federal action, municipal or federal transaction or regulation, strikes or other labor troubles, fire, damage, or destruction in whole or in part of merchandise or manufacturing plant, lack of, or inability to obtain, materials, labor, fuel or supplies, restraining orders or injunctions of any court or judge, or any other causes, contingencies or circumstances within or without the United States. Occurrence of any of the above, without the fault or negligence of DISTRIBUTOR, excuse MANUFACTURER from further performance of any of its obligations hereunder or, in its discretion, to extend the time of performance.

6. DELIVERY

If DISTRIBUTOR is unable or unwilling to accept delivery of goods at time of completion, MANUFACTURER shall invoice DISTRIBUTOR for the full purchase price. If MANUFACTURER is unable to store the goods in its own facilities, MANUFACTURER shall have the right to impose on DISTRIBUTOR a reasonable charge for handling and storage. Goods held for DISTRIBUTOR under this provision shall be held at DISTRIBUTOR’s sole risk. MANUFACTURER shall not be responsible for any loss or damage to the goods during such storage or for any indirect, incidental, or consequential damages resulting from any damage or loss to the goods while stored on DISTRIBUTOR’s behalf. Unless otherwise expressly provided, MANUFACTURER shall retain title to, and possession of, any models, drawings, patterns, dies, molds, jigs, fixtures and tools relating to this contract.

7. WARRANTY

MANUFACTURER warrants that at the time of shipment its goods shall be substantially free of material defects in workmanship and material under normal use and service and shall substantially conform to contract specifications and be within the limits and sizes specified by MANUFACTURER, subject to MANUFACTURER’s standard tolerances for variations. This warranty is inapplicable to the extent MANUFACTURER has selected materials or designed the product. If MANUFACTURER has provided a sample to DISTRIBUTOR that differs from contract specifications and DISTRIBUTOR has approved such sample, MANUFACTURER’s warranty will be satisfied if the goods either substantially (i) conform to the sample or (ii) conform to the contract specifications and fall within the limits and sizes specified by MANUFACTURER, subject to standard tolerances for variations. MANUFACTURER shall have no liability to DISTRIBUTOR if DISTRIBUTOR’s purchase order omits a specification and MANUFACTURER fills the order using goods that a material conformity to a standard or customary specification. In no event shall MANUFACTURER be liable for any defective good if examination discloses that the goods have been taxed beyond its normal capacity or the defective condition of such good was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or use in violation of the instructions, manuals, or any other written or oral communications from MANUFACTURER. MANUFACTURER will be afforded a prompt opportunity to inspect the goods. If DISTRIBUTOR shall fail to give such notice or provide such opportunity to inspect, the goods shall be deemed accepted and to conform with all terms of the contract and DISTRIBUTOR shall have no right to reject the goods for nonconformance. DISTRIBUTOR expressly waives any rights DISTRIBUTOR may have to reject or revoke order acceptance after such 15 day period. If DISTRIBUTOR provides MANUFACTURER with written notice within fifteen (15) days of learning of a possible warranty breach and MANUFACTURER is unable to correct the defect, DISTRIBUTOR may make a claim for any shortfall in excess of ten percent (10%) of the entire order; DISTRIBUTOR may require MANUFACTURER to make up the shortfall within a reasonable time of MANUFACTURER’s receipt of the notice; and (b) if the claim is for a breach of warranty, MANUFACTURER may, at its option, either repair or replace said portion of the goods, or refund the purchase price of the nonconforming goods, or dispose of the nonconforming goods, or provide credit for breach of warranty shall arise unless the goods have been returned to MANUFACTURER at MANUFACTURER’s expense, within thirty (30) days after such request is made. DISTRIBUTOR’s failure to provide timely notice shall constitute a waiver of its claims. The aforesaid obligations of MANUFACTURER to correct deficiencies in quantities in excess of ten percent (10%) and to repair or replace defective or nonconforming goods or refund the purchase price thereof is expressly agreed by the parties (a) to express the sole and exclusive remedy for breach of contract and (b) to limit MANUFACTURER’s liability and exclusion of consequential damages, including but not limited to consequential damages for personal injuries.

8. DISTRIBUTOR’S REMEDIES

DISTRIBUTOR agrees to inspect the goods prior to acceptance and upon receipt and to give written notice within fifteen (15) days to MANUFACTURER of the precise nature of any claim that the goods breach provisions hereof. MANUFACTURER will be afforded a prompt opportunity to inspect the goods. If DISTRIBUTOR shall fail to give such notice or provide such opportunity to inspect, the goods shall be deemed accepted and to conform with all terms of the contract and DISTRIBUTOR shall have no right to reject the goods for nonconformance. DISTRIBUTOR expressly waives any rights DISTRIBUTOR may have to reject or revoke order acceptance after such 15 day period. DISTRIBUTOR is hereby authorized to return products in whole or in part to MANUFACTURER’s factory for inspection and repair or replacement and DISTRIBUTOR shall have the right to retain possession of the returned merchandise until such time that the original warranty period shall have expired. DISTRIBUTOR acknowledges that this Agreement is for the protection of the goods, not services, and that MANUFACTURER shall therefore have no liability to DISTRIBUTOR for any harm or loss caused by advice received by DISTRIBUTOR or from MANUFACTURER for the performance of MANUFACTURER’s obligations with respect to inspection, repair or replacement of the goods. DISTRIBUTOR shall not have the right to reject the goods if the defects are caused by a cause beyond its control, such as fire, flood, or other acts of God, or the inability to deliver the goods at a particular place because of circumstances beyond DISTRIBUTOR’s control. DISTRIBUTOR acknowledges that DISTRIBUTOR is responsible for all inspection, repair, replacement or replacement costs. DISTRIBUTOR shall have the right, at its option, to reject the goods and MANUFACTURER shall have the option of replacing or modifying the same so that it does not infringe or to accept its return and grant to DISTRIBUTOR a credit for such products. This states the entire liability of MANUFACTURER with respect to infringement of patents by MANUFACTURER’s goods or any parts thereof. DISTRIBUTOR shall indemnify and hold MANUFACTURER harmless against any damages, costs or losses resulting from any suit or proceeding brought for infringement of patents, trademarks or copyrights or for failure to comply (1) relating to the use or sale of any of MANUFACTURER’S goods in any combination, method, or process and/or (2) arising out of compliance by MANUFACTURER with DISTRIBUTOR’s designs, specifications or instructions, including claims for patent or copyright infringement. If a claim is brought against MANUFACTURER by an agent or employee of DISTRIBUTOR, DISTRIBUTOR agrees to defend, indemnify and hold MANUFACTURER harmless from and against any and all liability, loss, damages, and expense relating to the claim.

9. HOLDING OF EXPORT DOCUMENTS

MANUFACTURER shall have the right to sell such all amounts due to MANUFACTURER against payments owed to DISTRIBUTOR, whether arising out of this or any other contract between DISTRIBUTOR and MANUFACTURER, its subsidiaries, or affiliates.