



General Terms & Conditions of Sale

The following are the Terms and Conditions under which Embedded Sense, Inc. ("ESI"), an Ontario, Canada incorporated company, sells and licenses hardware and software products ("Products").

1. DEFINITIONS; INTERPRETATIONS

"ESI Price List" refers to the price published by ESI on any ESI web site applicable to the Products that are the subject of a particular order and that is current when ESI accepts the order.

- 1.1 "Products" refers to ESI manufactured products (hardware & software) or accessories published on any ESI web site.
- 1.2 "Documentation" refers to manuals, handbooks, maintenance libraries, and other publications published or supplied with the Products. The term Documentation does not include Software or Distributed Software.
- 1.4 "Software" specifically refers to software or firmware products developed by ESI or its affiliates and made available on any ESI web site at no charge for use with the Products. The term "Software" applies to all parts of Software and to new releases, updates and all modifications of Software.
- 1.5 For Software, the term "purchase" means "license", and the term "purchaser" means "licensee".
- 1.6 "Technical Data" refers to information of any kind that can be used, or adapted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials.
- 1.8 The ICC Incoterms 1990 are hereby incorporated by reference into and shall govern the supply of Products under these General Terms and Conditions.

2. ORDERS, PRICES AND FEES

Prices and fees for Products will be as specified in the most current ESI Price List, less any applicable discount agreed to, in writing, by ESI. ESI may amend price lists at any time and such changes will become effective immediately.

Purchaser and ESI shall have entered into a binding agreement for the supply of the Products on the date on which ESI accepts in writing any order from Purchaser governed by these General Terms and Conditions, or any variation to them expressly agreed to in writing by ESI.

3. TAXES

Prices and fees are exclusive of and Purchaser shall be responsible for payment of any fees, sales, use, gross receipts, value added, property or other taxes, duties, or customs fees that are levied on the sale, use, transfer, or transportation of the Products however designated, levied, or based by any authority (except any tax based on ESI's net income). All sums payable by Purchaser in connection with the transaction to which these Terms and Conditions relate shall be paid free and clear of and without any deduction or withholding, whether for or on account of any tax, by way of set-off or otherwise; provided however if Purchaser is required by applicable law to deduct or withhold any tax from any amount payable hereunder, Purchaser shall pay such additional amount as is necessary to ensure that ESI receives and retains free from any liability a net sum equal to what it would have received and retained had an such deduction or withholding been required or made.

4. DELIVERY; SECURITY INTEREST; DELAYS

All items proposed for sale hereunder are quoted as F. O. B. ESI's Mississauga, Ontario, Canada facility and include ESI's customary packaging for shipment to all domestic or international locations. Purchaser shall bear sole responsibility for all costs relating to shipment from the point of origin of such items and import, and re-export, including but not limited to, freight import duties, customs duties, taxes, insurance and the like, and all fees, sales, use, gross receipts, value added, property or other taxes of any nature assessed upon or with respect to any items purchased hereunder. Risk of loss for all Products shall transfer to Purchaser upon satisfaction of ESI's delivery obligations in accordance therewith.

Purchaser grants to ESI a security interest, for its obligations hereunder in the Product or Services and any proceeds, and will execute any documentation reasonable necessary to perfect or secure such interest.

Quoted delivery dates are estimates, and ESI will not be liable for any delay in delivery or performance of other obligation where such delay is due to causes beyond the reasonable control of ESI.

5. EXPORT

- 5.1 Purchaser acknowledges and agrees that it shall comply with all applicable laws relating to any shipment, import, sale and/or re-export of the items purchased hereunder and Technical Data.
- 5.2 It shall be the obligation of Purchaser to determine any licenses or other authorizations required for the export or re-export of the items purchased hereunder and Technical Data from Canada and to apply for such licenses or other authorizations at its sole cost and expense. Notwithstanding anything else to the contrary stated herein or in any other document to which these Terms and Conditions relate, ESI shall not be obligated to sell, license or export from Canada the items purchased hereunder and/or the Technical Data until all licenses or other authorizations required for such export have been obtained.
- 5.3 ESI and Purchaser shall cooperate with the other as necessary or advisable to obtain compliance with applicable laws as required by this paragraph.
- 5.3 ESI will arrange for any export licenses or permits required in Canada, at the expense of ESI.

6. PAYMENT

Purchaser will make payment in full for items ordered hereunder at the time of order. **All payments to ESI shall be made only in United States dollars.**

7. FINAL USE

The Products are intended for integration with other components and/or assemblies that will form the Purchaser's final product and/or system. The Purchaser is responsible for final use of the Products as integrated into their products and/or system and Purchaser agrees that ESI will not be liable for any damage that may result as a result of final use of Purchaser's products or systems in which the Products are integrated.

8. CLEARANCES; LICENSES

Purchaser shall have the responsibility at its expense to obtain, if not already obtained by ESI, all required governmental clearances, certifications and licenses relating to the purchase, delivery, installation or operation of the Products in their final use, including but not limited to, export licenses and all necessary type approvals and other licenses for installation and operation in the final use, such as licenses from the applicable radio frequency regulatory authority.

9. TITLE; PRODUCT ACCEPTANCE

Upon full payment of the contract/invoice price, title to the Products and Software passes to the Purchaser. Purchaser acceptance of the Product and Software is deemed to occur upon delivery to the F.O.B. location and issuance of a bill of lading, unless other acceptance criterion has been agreed to, in writing, between the Purchaser and ESI.

10. RESERVATION OF PROPERTY RIGHTS

- 10.1 The purchase or license of Products does not convey any right to combine or connect Products with products other than products authorized by ESI where ESI has one or more patents covering such combinations or connection. Such authorized products are:
 - a) Products covered by an express license between ESI and Purchaser,
 - b) Products distributed directly or indirectly by ESI, or
 - c) Products distributed directly or indirectly by any licensee whose license includes the right to resell or sublicense such products.
- 10.2 Except as expressly set forth in these Terms and Conditions, ESI grants no right title or interest in any of its designs, copyrights, other intellectual property rights, hardware, software, firmware and documentation to Purchaser.
- 10.3 Purchaser acknowledges that the design of the Products is secret and confidential, that disclosure to unauthorized persons could result in serious and irreparable damage to ESI, and agrees to keep it secret and confidential.

11. SOFTWARE LICENSE

Purchaser receives no right to use any Software except by a grant of a Software License by ESI. Unless agreed otherwise, in writing, by ESI the terms of the Software License shall be as provided below.

11.1 Grant of Software License

- 11.1.1 On ESI's acceptance of Purchase's order for the Products, ESI grants Purchasers perpetual nonexclusive license to use the Software.
- 11.1.2 ESI grants no Software licenses whatsoever, either explicitly or implicitly, except by the acceptance of an order for the Products.
- 11.1.3 ESI represents that it is the owner of the Software and all portions thereof and that it has the right to modify the Software and grant Purchaser a license for its use.

11.2 Software License Terms

- 11.2.1 Software Execution. Purchaser may execute the applicable Software on Products purchased from ESI, and may load, copy or transmit the Software, in whole or in part, only as necessary for execution on the Products, except that Purchaser may make archival copies of the Software as allowed under the copyright laws in the United States. In order to protect ESI's intellectual property rights in the Software, Purchaser agrees to reproduce and incorporate ESI's restrictive notices or legends in any copies, modifications, or partial copies.
- 11.2.2 Modification and Merger. Purchaser may modify the Software in machine-readable form only or merge modified Software or unmodified Software into other Software to form adaptations intended and used solely for execution by Purchaser on Products purchased from ESI. Any part of the Software included in such adaptations will continue to be subject to these Terms and Conditions and of the applicable Software License.
- 11.2.3 Access. Purchaser may make the Software available to its employees and agents only to the extent needed to exercise its license hereunder. Purchaser shall not make the Software available in any form to any other parties. To the extent the Software contains any confidential or trade secret information, the Software and the information it contains are licensed to Purchaser pursuant to a confidential relationship. Purchaser expressly acknowledges this confidential relationship and agrees to keep the Software and information in confidence at provided herein.
- 11.2.4 Record Keeping. Purchaser shall keep complete and accurate records uniquely identifying the Software and the Products (through retention of the ESI issued license certificate or otherwise), and the current location of the combined Software and Products. Within thirty (30) days after receiving a request from ESI, Purchaser shall provide copies of the applicable records to ESI. Purchaser agrees to reproduce ESI's copyright and all other legal notices, including but not limited to other proprietary notices and notices mandated by governmental entities, on all complete or partial copies, adaptations, or transmissions of the Software.

11.3 Taxes

Purchaser shall, in addition to the other amounts payable under the Software License, pay all sales and other taxes, federal, state, or otherwise, however designated, that are levied or imposed by reason of the transaction contemplated by the Software License.

11.4 License Termination

11.4.1 ESI may terminate any licenses granted with the purchase of any Products placed hereunder if Purchaser neglects or fails to perform or observe any of its obligations to ESI under these Terms and Conditions and such condition is not remedied within 10 (ten) days after written notice has been given to Purchaser. Termination, whether by ESI or Purchaser, shall apply to all versions of the Software License for execution on the Products.

11.4.2 Any Software Licenses granted hereunder immediately terminate in the event Purchaser

- a) Terminates or suspends its business activity;
- b) Becomes subject to any bankruptcy or insolvency proceeding under federal, state or foreign statutes or becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority.

11.4.3 Before any termination by Purchaser becomes effective, and in the event of any termination by ESI, Purchaser shall:

- a) Return to ESI any license certificate furnished by ESI;
- b) Destroy all copies of all versions of the Software in Purchaser's possession;
- c) Remove all portions of all versions of the Software from any adaptations made by Purchaser and destroy such portions; and
- d) Certify in writing to ESI that all copies, including all those included in Purchase's adaptations, have been destroyed.

11.4.4 Without limiting any of the above provisions, in the event of a termination, Purchaser shall continue to be liable for payments due. Termination of the Software License shall be in addition to, and not in lieu of, any other remedies available to ESI.

13. WARRANTY

13.1 General

Products are manufactured for industrial/commercial uses and are not intended to be sold or licensed for use in critical safety systems, nuclear facilities, hazardous waste management applications, or other non-standard industrial/commercial uses not contemplated by ESI. Purchaser represents that it will not use any Products for other than industrial/commercial purposes and in no event will any Products be used for or in connection with weapons development or production. If any such application is intended, ESI must be notified in writing so that it may determine if additional contractual safeguards will be required, or if warranties, if any, shall apply. Purchaser shall comply with all laws, regulations, ordinances, by-laws, codes and orders of all federal, state, provincial, municipal and local governments, agencies, boards, and authorities applicable to the warranty of the Products and Purchaser shall obtain all licenses, permits, certificates or other documentation required to evidence such compliance.

13.2 Products

13.2.1 ESI warrants that, under normal use and if properly maintained during the applicable warranty period, the Products will operate in accordance with ESI's published specifications therefor and will remain free from defects workmanship and material for one (1) year after the date of shipment.

13.2.2 The warranties provided herein are limited warranties, and do not apply to; any material or equipment furnished by ESI which are supplied on an "AS IS" basis; the replacement of batteries or any other disposable or consumable parts; any defect or failure arising out of improper storage, use or operation outside of specified environmental conditions or applications, or conditions arising out of causes external to the Products after delivery; conditions resulting from any modifications made to the Products other than that made or authorized by ESI.

13.2.4 If any Product supplied hereunder shall prove to be defective in material or workmanship under normal intended usage and maintenance during the warranty period, and is so found upon examination by ESI, then ESI shall repair or replace at its sole option, such defective item at its own expense. Warranty service will be provided in the Canada at a repair facility designated by ESI or at any other such facility designated by ESI. Transportation costs of the Products to the repair facility shall be the responsibility of Purchaser, and Purchaser shall obtain from ESI a Return-Authorization number prior to return of the defective items. Return transportation costs of the Products to the Purchaser shall be the responsibility of ESI. If ESI determines that the Product or Software is not defective within the terms of the warranty, the Purchaser shall pay ESI's repair or replacement costs, shipping and related costs at the current rates of ESI.

13.2.5 The warranties stated above are in lieu of all other warranties, express or implied, statutory or otherwise, including implied warranties of merchantability and fitness for purpose, and represent the full and total obligation and liability of ESI. ESI makes no warranties whatsoever in respect of the quality, accuracy, or content of completeness of the information or recommendations provided by the Products and shall not at any time be liable directly or indirectly for such information or recommendations. There, Purchaser understand and agrees that the Products will not operate uninterrupted or error free, and that; Product users must apply professional judgement when using, deciding or forming any conclusions based on the information or recommendations provided by the Products and Purchaser or it's customers shall be solely responsible for such use, decisions and conclusions; as interruption of the Products will occur, Purchaser or it's customers are responsible for the maintenance of adequate backup facilities to perform Product operations.

13.3 Software

13.3.1 ESI warrants to Purchaser that Software will conform, as to all substantial operational features, to ESI's current published description and will be free of defects that substantially affect system performance. The term of the warranty shall be for 1 (one) year after the date of installation or delivery, whichever occurs first. However, Purchaser must notify ESI in writing within 90 (ninety) days of installation of any defect claim or waive its right to raise the issue. If ESI finds the Software defective, ESI's sole obligation under this warranty is to remedy such defect and provide conforming software in a manner consistent with ESI's business practices.

13.3.2 ESI does not warrant that the execution of Software shall be uninterrupted or error free.

13.3.3 Other than as stated in Paragraph 13.3.1, Software is provided "AS IS."

13.6 Warranty Disclaimer

IN ADDITION TO BEING LIMITED WARRANTIES, THE ABOVE WARRANTIES ARE THE ONLY ONES MADE BY ESI. PURCHASER RECEIVES NO OTHER CONDITIONS, WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OR ARISING FROM TRADE USAGE OR PRACTICE. ESI EXPRESSLY DISCLAIMS ALL IMPLIED CONDITIONS OR WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14. MODIFICATIONS; ENHANCEMENTS; ALTERATIONS

Purchaser shall not make any alterations, enhancements, or modifications to Products without prior written approval by ESI. In the event Purchaser makes any unauthorized alterations, enhancements, or modifications, conditions of warranty are immediately breached and in addition to any other remedies ESI may have hereunder or at law or in equity, ESI may require that Purchaser immediately remove, at Purchase expense, any ESI trademark, trade name or other identification, statutory or otherwise, from such Products. Purchaser understands and accepts full responsibility that unauthorized alterations, enhancements, or modifications to Products may void regulatory approvals required by statutory bodies in the country of operation or installation.

15. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS

Other than as expressly stated herein or agreed to in writing by ESI, ESI grants no right, title or interest in or to any of its patents, copyrights, trade marks, trade names, symbols, industrial designs or other industrial or intellectual property rights in any hardware, software, micro-code or documentation to Purchaser. Purchaser further understands and agrees that such industrial and intellectual property is Confidential Information and the treatment thereof shall, in the least, be the same as Confidential Information of the Purchaser. No right of access by Purchaser to the source code to ESI Products or the Products is granted hereunder.

16. PATENTS AND COPYRIGHT INDEMNIFICATION

ESI shall defend, at its expense, any claim (including any suit) brought against Purchaser in Canada alleging that any Products, Software or Documentation furnished hereunder infringes a duly issued Canadian patent or copyright ("Infringement") and shall pay all costs and damages finally awarded against Purchaser that are directly attributable to such Infringement, provided that ESI is:

- a) Given written notice of such claim within 10 (ten) days of Purchaser learning of such claim,
- b) Promptly furnished a copy of all communications, notices and/or other actions relating to such claim, and
- c) Given the sole authority and reasonable assistance (at Purchaser's expense) necessary to defend or settle such claim.

In the defense or settlement of the claim, ESI may obtain for Purchaser the right to continue using the Products, Software or Documentation, replace or modify the Products, Software or Documentation, so they become non-infringing or, if such remedies are not reasonably available, grant Purchasers credit for the Products, Software or Documentation as depreciated and accept their return. ESI shall not have any duty or liability hereunder if the Infringement arises directly or indirectly out of or from:

- (a) The use, license, or sale of the Products, Software or Documentation, in combination with other products (including software) not furnished by ESI,
- (b) Purchase's modification of the Products after delivery by ESI, or
- (c) the use of such Products in a process.

ESI DISCLAIMS ALL OTHER LIABILITY TO PURCHASER FOR VIOLATION, MISAPPROPRIATION OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, AND FURTHER DISCLAIMS ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DATA, OR USE) OF ANY NATURE, REGARDLESS OF WHETHER LIABILITY ARISES IN CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY, INDEMNIFICATION OR OTHERWISE AND INCLUDING WITHOUT LIMITATION, NEGLIGENCE AND DETRIMENTAL RELIANCE.

17. EXCLUSIVE REMEDIES; LIMITATIONS

- 17.1 Purchase's only remedies in connection with any sale or license hereunder are set forth in this Paragraph 17. These remedies are Purchaser's exclusive remedies and are in lieu of any other remedy hereunder or at law or in equity.
- 17.2 In all situations involving performance or non-performance of Products and Software furnished hereunder, Purchase's remedy is:
 - (a) Repair or replacement by ESI, at ESI's option, of defective Products if notified by Purchaser of the defect within the warranty period and such defects are confirmed by ESI upon inspection;
 - (b) Remedy, by ESI in the manner specified in ESI's current published description, of a non-conformance of Software to the current published description during the stated warranty period; or
 - (c) If ESI fails to perform its warranty responsibilities, or if Purchaser has any other valid claim related to any Products purchased or licensed from ESI, Purchaser shall be entitled to recover only direct damages and only up to the limits set forth in 17.3 below. In connection with the conduct of any litigation with third parties relating to any liability of ESI to Purchaser or to such third parties, ESI will have all rights that are appropriate to its potential responsibilities or liabilities, including without limitation, the right to participate in all such litigation and to settle or compromise its liability to third parties.
- 17.3 ESI'S AGGREGATE LIABILITY TO THE PURCHASER ARISING HEREUNDER (INCLUDING PARAGRAPH 15) FOR ANY AND ALL CAUSES WHATSOEVER SHALL BE LIMITED TO THE PURCHASE PRICE PAID TO ESI FOR THE ITEMS SOLD HEREUNDER THAT ARE THE SUBJECT OF PURCHASER'S CLAIM. THIS LIMITATION WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY, INDEMNIFICATION, OR OTHERWISE, AND

INCLUDING WITHOUT LIMITATION, NEGLIGENCE AND DETRIMENTAL RELIANCE. THE FOREGOING LIMITATION DOES NOT APPLY TO DAMAGES RESULTING FROM PERSONAL INJURY CAUSED BY ESI'S NEGLIGENCE.

- 17.4 IN NO EVENT WILL ESI BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNATIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DATA, OR USE) OF ANY NATURE, REGARDLESS OF WHETHER LIABILITY ARISES IN CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY, INDEMNIFICATION, OR OTHERWISE, EVEN IF ESI HAS BEEN ADVISED OF THE POSSIBILITY THEREOF INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF EXPECTED REVENUES OR FAILURE TO REALIZE EXPECTED SAVINGS, OR DAMAGES RESULTING FROM LOSS OF DATA OR LOSS OF USE OF ANY HARDWARE, SOFTWARE OR AOTHER MATIERALS DELIVERED (OR NOT DELIVERED) BY ESI HEREUNDER. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY IN RESPECT OF ANY CLAIM, ACTION OR PROCEEDING, INDLUCING BUT NOT LIMITED TO BREACH OF WARRANTY, CONDITION OR COVENANT, MISREPRESENTATION, NEGLIGENCE OR TOEHR TORT, AND WHETHER THERE SHALL HAVE BEEN A FUNDAMENTAL BREACH OF THIS AGREEMENT.

18 FORCE MAJEURE

- 18.1 **Grounds of Relief from Liability.** Neither Party shall be liable for any failure to perform any of its obligations hereunder so far as it can prove that the failure was due to an impediment beyond its reasonable control, that it could not reasonably be expected to have taken the impediment and its effects upon its ability to perform into account at the time of the conclusion of the Agreement, and that he could not reasonably have avoided or overcome it or at least its effects. An impediment may result from events including the following:
- (a) War, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
 - (b) Natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
 - (c) Explosions, fires, destruction of machines of factories, and of any kind of installations;
 - (d) Boycotts, strikes, lockouts of all kinds, go-slows, occupation of factories and premises, and work stoppages that occur in the enterprise of the Party seeking relief;
 - (e) Acts of authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed the risk by virtue of other provisions of this Agreement.

For the purpose of this Section 18.1, and unless otherwise stated in this Agreement, impediment does not include lack of financial capacity or lack of authorizations, of licenses, of entry or residence permits, or of approvals necessary for the performance of the Agreement and to be issued by a public authority of any kind whatsoever in the country of the Party seeking relief.

- 18.2 **Duty to Notify.** The Party seeking relief under this Article 18 shall as soon as practicable after the impediment and its effects upon its ability to perform become known to it give notice to the other Party of such impediment and its effects on its ability to perform. Notice shall also be given when the ground of relief ceases. The ground of relief takes effect from the time of the impediment or, if notice is not timely given, from the time of notice. Failure to give notice makes the failing Party liable in damages for loss which otherwise could have been avoided.
- 18.3 **Effects of Grounds of Relief.** A ground of relief under this Article 18 shall relieve the failing Party from damages, penalties and other sanctions, except from the duty to pay interest on money owing as long as and to the extent that the ground subsists. Further, it shall postpone the time for performance, for a period that shall not exceed sixty (60) days, thereby excluding the other Party's right, if any, to terminate or rescind the Agreement during that period. Pending resumption of performance by the failing Party the other Party may suspend its own performance. If the grounds of relief subsist for more than sixty (60) days, either Party shall be entitled to terminate this Agreement upon five (5) days notice. In such an event, each Party may retain what he has received from the performance of the Agreement carried out prior to such termination, and each Party must account to the other for any unjust enrichment resulting from such performance. The payment of the final balance shall be made without delay.

19. GENERAL PROVISIONS

- 19.1 Any descriptions, and the provisions in the ESI Price List, applicable to Products that are the subject of Purchaser's order, shall be considered part of these Terms and Conditions and are provided to Purchaser, or if not provided, are available to Purchaser on request. However, such descriptions and provisions shall not be construed to expand ESI's warranty or other obligations hereunder. ESI's acceptance of Purchaser's order will form an agreement subject only to these Terms and Conditions. Any terms or conditions on Purchaser's order, whether preprinted or typed, shall be null and void.
- 19.2 This agreement is governed by and construed under the laws of the Province of Ontario, Canada, without reference to its conflict of laws rules. Purchaser agrees to submit to personal jurisdiction of the provincial and federal courts located in the Province of Ontario, Canada. The United Nations Convention on the International Sale of Goods shall not be applicable to this agreement or any arrangement arising out of this agreement relative to the supply of the items being supplied hereunder.
- 19.3 These General Terms and Conditions, the Distribution Agreement and any ESI order documentation, collectively shall constitute the entire agreement between the parties with respect to the supply by ESI of Products. All prior documents, instruments, memoranda, understandings and agreements between the parties, whether written or oral, shall be of no force and effect. Any binding agreement between the parties may not be amended or modified in any respect except by written instrument signed by the parties, and any terms and conditions contained in any purchase or shipping order or other documentation delivered by Purchaser to ESI shall not apply to the agreement between the parties.
- 19.4 No action, claim or proceeding, regardless of form, arising out of any binding agreement between the parties for the supply of Products shall be brought by either Party more than twelve (12) months after the claiming Party becomes aware of, or ought to have become aware of, the facts giving rise to the existence of any cause of action; provided however, that the parties further agree that in no event shall either of them bring any action, claim or proceeding under or in relation to their agreement for the supply of Products later than two (2) years after the date of expiration or termination hereof.
- 19.5 At no time may Purchaser directly or indirectly assign, pledge or hypothecate any of its rights, duties or obligations under their agreement without the prior written consent of ESI. ESI shall have the right to assign the agreement between the parties, at its discretion, in whole or in

part, to any other Party. The agreement shall enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors, legal representatives, and permitted assigns.

- 19.6 The division of the agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of the agreement. If any provision of their agreement or any portion of it shall be invalid or unenforceable, the remainder of the agreement shall not be affected and every other provision of the agreement shall continue to be of full force and effect and valid and enforceable to the fullest extent permitted by law.
- 19.7 The parties agree that all correspondence, notices and communications of every nature referred to herein or to be given in respect of their agreement shall be in the English language that shall govern the agreement.
- 19.8 The rights available to the parties under their agreement shall be deemed to be separate and are not dependent on each other and each such right accordingly shall be construed as complete and not be referenced to any other such right. Any one or more combination of such rights may be exercised by the parties from time to time and no such exercise shall exhaust the rights of the parties or preclude the parties from exercising any one or more of such rights or combination of them, whether provided for in the agreement or at law, from time to time thereafter or simultaneously; provided, however, that the exercise of all remedies under the agreement and at law, individually and cumulatively, shall be subject to the limitation of liability provisions contained in the agreement.
- 19.9 Purchaser agrees that it shall not act in the name of or on the behalf of ESI, and nothing in their agreement shall make Purchaser the employee, agent, joint venturer, partner, franchisee or legal representative of ESI for any purpose whatsoever, nor grant Purchaser any authority to assume or to create any obligation on behalf of or in the name of ESI. Purchaser further agrees to ensure that its sub-distributors and agents do not incur any such obligations or make any such promises or representations.