Terms & Conditions of Sale

1. Applicable Terms and Conditions

a) As used herein, “Seller” shall mean “Hielscher USA, Inc.”;

b) Seller’s Terms & Conditions of Sale only (“Sales Terms”) shall apply to all of Seller’s Quotations, Buyer’s resulting Orders or Purchase Orders [“Order(s)”], and Seller’s Acknowledgments of Orders, if any, for the delivery of Seller’s Services and/or Goods;

c) notwithstanding any terms or conditions on Buyer’s Orders or any other documents to the contrary, Seller’s Quotations and performance of all Orders are expressly made conditional on Buyer’s acceptance of Seller’s Sales Terms only, and Seller’s Quotations expressly limit Buyer’s acceptance to Seller’s Sales Terms only. Seller’s Acknowledgments of any Orders, or commencement of performance or delivery of any Orders, or Buyer’s issuance of any confirmations, acceptances or Orders, or Buyer’s acceptance, payment or use of any Services and/or Goods shall constitute Buyer’s acceptance of Seller’s Sales Terms only;

d) Seller objects to all terms of Buyer which are in conflict or inconsistent with, in addition to, or different from (“Additional Terms”) the Seller’s Sales Terms. Any such Additional Terms shall not apply or become part of any Order, and Seller’s failure to object to any Additional Terms of Buyer shall not constitute an acceptance thereof;

e) in the event Seller’s Sales Terms are not set forth at length in or attached to Seller’s Quotations as part of the quotation process, but instead are cited by reference to Seller’s website or incorporated by reference in Seller’s Quotations, then these Sales Terms only shall be deemed accepted by Buyer and become part of any Orders as if set forth at length in Seller’s Quotations;

f) any Acknowledgments issued by Seller on either Seller’s or Buyer’s forms shall be deemed issued for administrative purposes only. Such Acknowledgments shall not affect Buyer’s acceptance of Seller’s Quotations on Seller’s Sales Terms only, nor constitute an acceptance of Buyer’s Additional Terms.

2. Quotations

a) Seller’s Quotations or Proposals [“Quotation(s)”] are offers to enter into an agreement. For an effective agreement to be reached a duly authorized agent of Buyer must accept all of the Seller’s Sales Terms;

b) Written Quotations will automatically expire sixty (60) calendar days from the date issued and are subject to earlier termination by written notice. Prices stated on the Seller’s website and on any promotional literature are subject to change without notice and are firm for the initial Order only. Orders calling for future delivery will be billed according to the price in effect at the time of delivery;

c) Oral Quotations will not be honored by Seller.

3. Deliveries

a) All Services and/or Goods and parts or items thereof [“Good(s)”] shall be quoted, sold and shipped FOB Seller’s facility;

b) all delivery dates are approximate and are conditioned on Seller’s timely receipt of all Buyer, Buyer-furnished, or Buyer’s Buyer materials, design approvals, test samples, test lots, Buyer’s payments, data, instructions, fixtures, equipment or any other materials All delivery dates shall be extended based on additional time required by Seller

    i. to perform the Services with respect to the Goods,

    ii. to obtain proper or correct documentation from the Buyer, or

    iii. to notify and receive Buyer’s disposition or other instructions relating to the delivery of the Goods or performance of the Services; and

c) Seller shall not be in default in the performance of any Order if any delay or failure to perform is caused in whole or in part by causes beyond the reasonable control of Seller, including without limitation any acts of God, Buyer, Buyer’s agents, the public enemy, riots, war or terrorism; fire, flood, earthquakes, epidemics, quarantines, embargos, severe weather or natural disasters; labor actions, strikes or slowdowns; accidents; lack of, inability to obtain, shortages, or delays in obtaining any materials, labor, fuel, electric power, water or other supplies; any delays, failure to procure, suspension or revocation of any export, import or other licenses, approvals or authorizations; delays or defaults of suppliers; any orders, priorities, acts, or any governmental laws or regulations imposed by any civil or military governmental authority in either its sovereign or contractual capacity; or any other causes beyond the reasonable control of Seller. In such event the time for performance shall be extended for the period of such force majeure;

d) Unless Buyer notifies Seller to the contrary in writing within 72 hours after receipt of an item of an Order, it shall be conclusively presumed that the item of this Order was delivered to Buyer in good operating condition, that the item conforms in all respects to Buyer’s order and that Buyer has accepted the Goods for all purposes under the agreement.

4. Terms of Payment

a) Unless otherwise specified in Seller’s Quotation, all quotations and payments shall be in US dollars and are due net 30 days from the date of Seller’s invoice. Payments shall be made by credit card payment, by bank transfer, or by other method acceptable to Seller. All overdue payments shall bear interest at the rate of 1.5% per month (equal to 18% per annum), or the maximum rate permitted by law if lower, from the date such payments are due;

b) Buyer shall be liable for all applicable federal, state, local or foreign taxes, duties, imports, tariffs, fees and all other similar taxes, charges or levies, all of which shall be added to the price of the Order and paid by Buyer;

c) Buyer shall be liable for all transportation, handling and insurance costs;

d) all pricing is subject to change by Seller in the event Buyer’s Order changes any quantities or other requirements as set forth in Seller’s Quotation;

e) all Orders are subject to Seller's approval of Buyer's credit. Seller may suspend delivery, withhold Goods, and require full payment if Seller determines in its sole discretion that Buyer's financial condition justifies such actions;

f) in the event Buyer defaults in any payment or breaches any other term of the Order, Seller may withhold delivery of Goods until full payment is made, or terminate the Order for Buyer's default without prejudice to all other rights and remedies of Seller;

g) until Seller receives full payment for the Goods, the Goods shall remain the sole property of Seller and Seller retains the title thereto and Seller may inspect the Goods at any time. Buyer shall keep the Goods free from all claims, liens, security interests and encumbrances. The Goods shall at all times remain personal property, whether or not any Goods or parts of the Goods shall become affixed to or a part of any real property or real property improvements. Buyer shall use the Goods only at the Buyers Location and Buyer shall not export, remove, transfer, alter, or modify any item of Goods without Sellers's prior written consent;

h) all rights and remedies of Seller under this Agreement and at law or equity shall be cumulative;

i) if Buyer fails to perform any of its obligations hereunder, Seller may, but shall not be obligated to, perform any act or make any payment that Seller deems reasonably necessary for the maintenance and preservation of the Goods and Seller's interests therein; provided, however, that the performance of any act or payment by Seller shall not be deemed a waiver of, or release Buyer from, the obligation at issue. All sums so paid by Seller, together with expenses (including legal fees and costs) incurred by Seller in connection therewith, shall be paid to Seller by Buyer immediately upon demand;

j) in the event Seller engages an attorney to collect any amounts due, pursue any claim against Buyer, or defend against any claim asserted by Buyer, Buyer agrees to pay all reasonable attorneys fees, costs of suit, and litigation expenses incurred by Seller if Seller prevails with respect to such collection or other claims;

k) Buyer shall not deduct or set off any monies due Seller under any Orders;

l) Buyer's payments of Seller's invoices shall not be delayed or conditioned on approval or payment by Buyer's Buyer or any third party; and

m) Buyer's Orders are not cancellable and all deposits are nonrefundable.

5. Rental Terms and Conditions

a) If Goods rental is agreed, Goods are rented on a monthly basis with a one (1) month minimum rental period. The rental period shall commence on the date Seller ships Goods of an Rental Order to the Buyer and shall in all cases extend until the date Goods are received at the Seller's Warehouse;

b) Buyer shall pay Seller monthly during the Rental Period the Monthly Rental Fee indicated for each item of Buyer's Order together with all sales and use taxes imposed thereon. In the event that any Rental Period terminates as to an item of Order after the one month minimum Rental, the rental fee charged shall be charged 100% of the Monthly Rental Fee. In the event that the Rental Period for an item of Goods is less

than the Anticipated Rental Period indicated, Buyer shall forfeit and pay Seller any discounts granted upon the length of the Anticipated Rental Period;

c) For the Rental Period, the Goods shall remain the property of Seller and is provided to Buyer solely on a rental basis without any option to purchase unless such an option is granted prior to the commencement of the Rental Period and explicitly set forth in writing on this document or in some other document signed by the parties. Buyer shall use the Goods only at the ship-to-location, and shall not export, remove, sublease, rent, transfer, assign, sell, alter, modify or encumber any item of Goods without the prior written consent of Seller;

d) Buyer shall bear the entire risk of loss, theft, damage or destruction from any cause whatsoever of the Goods and Buyer shall not be relieved of the obligation to pay rent or from any other obligation under this agreement. Buyer shall be responsible for and pay to Seller on demand the new replacement cost of any lost or materially damaged Goods (including accessories),as well as the cost of restoring any Goods that are returned with extraordinary wear and tear or damage within 30 days after invoice. With respect to lost or materially damaged Goods Buyer shall be responsible for rentals to the date of receipt by Seller of the full new replacement cost. As used herein, the term "materially damaged" means damage to the Goods to such an extent that the cost to repair such Goods equals or exceeds fifty percent (50%) of the fair market value of the Goods at that time. Until a damaged item has been repaired, Buyer shall be responsible for the Monthly Rental Fee. Buyer shall not remove or deface ownership labels, calibrations seals and anti-tamper notices affixed to the Seller's property. If any such label, seal or notice is removed or defaced, Buyer shall pay a reasonable calibration or refurbishing fee;

e) Buyer shall insure each item of Seller's property against risk of loss, damage, theft or destruction for not less than the replacement cost of each item and if requested by Seller shall provide evidence of such insurance.

6. Software

a) Goods include any software provided therewith. Software shall remain the property of its licensor. The terms and conditions of any software license agreement covering the software are incorporated herein by reference and supersede anything to the contrary herein, and Buyer agrees to be bound by such terms and conditions, particularly those limiting the use and transfer of the software.

b) Except as otherwise permitted therein, Buyer shall use the software only with the Goods and shall not copy, remove, sublicense, rent, transfer, assign, sell, alter, modify or encumber the software without licensor's prior written consent. Software is warranted only to the extent provided for directly by the licensor.

c) Seller makes no warranty as to the performance of any software.

7. Indemnification

a) Buyer shall indemnify, hold harmless and defend Seller from any and all claims, actions, damages, including attorneys' fees arising out of the Goods and

   i) the selection, manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, maintenance, use, condition, return or operation of the Goods,

including without limitation any such claims arising out of the theory of strict liability in tort;

ii) any latent defects or other defects in any Goods, whether or not discoverable by Seller or by Buyer;

iii) any patent, trademark, or copyright infringement; and

iv) the condition of any Goods arising or existing during Buyer's use.

b) Buyer's obligations hereunder shall survive termination of this Agreement.

8. Limited Warranty and Liability

a) Seller warrants to Buyer that in normal and contemplated use and service, products purchased from Seller will be free from defects in material or workmanship for a period of one (1) year from the date of purchase.

b) Should such deficits be found, Seller will replace the defective pieces free-of-charge. Seller will not be responsible for any fiscal or other damages a Buyer or user may incur from the application of a defective Seller's product.

c) The foregoing limited warranty and remedy are the exclusive warranty and remedy available to any person for any damages of any kind and nature, including incidental, consequential or special, related to Seller's products, whether arising from warranty, contract, negligence, tort or otherwise and are in lieu of any oral representation and all other warranties and remedies, whether implied or statutory;

d) Seller specifically disclaims any representation, warranty, express or implied, with respect to any matter whatsoever including, without limitation, the design compliance with specification, operation, or condition of any Goods (or any part thereof), the merchantability or fitness of any Goods for a particular purpose specific to the Buyer, or issues regarding patent infringement, title and the like. The Buyer is solely responsible for the selection, use efficiency, fitness and suitability of Seller products.

e) No waiver, alteration, or modification of the foregoing conditions shall be valid unless made in writing and signed by an authorized executive officer of Seller.

f) The Buyer assumes all risks and liabilities in connection with the use of Seller's products.

g) Seller does not warrant that its products meet any specific criteria described in publications related to their development or use. Parts, devices, or Goods supplied by vendors other than Seller, shall carry only the applicable warranties and limitations provided by the relevant vendor. Expendable and/or consumable items or parts included or used in connection with Seller's products are not covered under this limited warranty. This limited warranty does not cover Seller's products that have been misused, altered, disassembled, neglected, handled carelessly, or used for purposes other than their intended purpose. This limited warranty also does not cover loss or damage resulting from any casualty loss or from unauthorized use or service. Under no circumstances shall Seller be held liable for consequential or other damages, losses, or expenses in connection with or by reason of the use or inability to use Seller's products for any purpose.

h) If a defect occurs, the Buyer should return the defective Goods, freight and insurance prepaid, in the original shipping container. Any returned Seller products must be accompanied by a written statement including: the name of Buyer; a description of the problem(s); and the action desired. Seller shall not be responsible for any loss or damage incurred in shipping.

i) In no event shall Seller be liable to Buyer for any indirect, special or consequential damages or lost profits arising out of or relating to Seller's products, or their performance or non-performance, even if Seller has been advised of this possibility.

j) Seller's liability, if any, to Buyer or to any Buyers of Buyer or any other person under this limited warranty shall in no event exceed the total amount paid to Seller by the Buyer for a defective or non-conforming Good.

k) In the event any implied warranties (including, but not limited to the implied warranties of merchantability or fitness for a particular purpose) are found to exist, such warranties are limited

   i) in duration to the period of the limited warranties set forth in this document, and

   ii) in amount to the total paid to Seller by the Buyer for the Goods in question.

l) Some states or countries do not permit the exclusion of incidental or consequential damages, and in those jurisdictions the foregoing limitation may not apply. The limited warranties as set forth in this document give the Buyer specific legal rights and the Buyer may have other legal rights which vary from State to State.

9. Loss or Damage

a) Buyer shall be responsible for all loss or damage to the Goods while in transit to Seller’s facility, and after Seller’s delivery of the Goods FOB Seller’s facility;

b) Seller shall not be liable for any defects or failures of the Goods due to any improper handling, storage, transportation or use of the Goods by Buyer or any other person or entity, except Seller;

c) Seller shall not be liable, and Buyer shall be solely responsible for, any loss or damage to the Goods or any loss or damage caused by the Goods, resulting from any Defects in the Goods;

d) Seller shall not be liable for any failure or inability of the Goods to meet any manufacturer’s or others specifications or requirements;

e) Seller shall not be liable for any loss or damage to the Goods while in Seller’s custody unless caused by Seller’s negligence;

f) Seller’s count of all Property shall be final and binding;

g) in no event shall Seller’s maximum liability for any damages arising out of, resulting from, or in connection with any Order for any reason exceed the price of Seller’s Goods as set forth on the Order from which any claim arose or accrued;

h) in no event shall Seller be liable for any consequential, incidental, indirect, direct, punitive, special or other damages (including without limitation any personal injury, death or property damage, or any loss of use of any property, or any loss of revenues,

profits or business, or any liability of Buyer to its Buyers or third parties) arising out of, resulting from, or in connection with any Order for any reason; and

i) Buyer's sole and exclusive remedy under any Order shall be limited to:

   i. the recovery of the price of Seller's Goods as set forth on the Order from which any claim arose or accrued, subject to the limitations of liability as set forth in Seller's Sales Terms herein, or at Seller's sole option

   ii. Seller's re-delivery of the Goods required by the Order.

10. Confidentiality

a) Buyer agrees to keep this agreement, and all terms and conditions hereof, in strict confidence and shall not, directly or indirectly, disclose this agreement or any terms or conditions hereof to any other person or entity without the prior written consent of Seller;

b) Buyer agrees to keep all oral and written confidential, proprietary or financial information or trade secrets or intellectual property of Seller ("Confidential Information") which may be disclosed to Buyer in connection with any Order in strict confidence. Buyer shall not, directly or indirectly, use, copy or disclose the Confidential Information to any other person or entity;

c) Buyer agrees that it shall not, directly or indirectly, publish or otherwise communicate, or cause any person or entity to publish or otherwise communicate in any manner any negative, critical, derogatory, disparaging, defamatory or injurious comments or statements relating to Seller, or its reputation, or its services or business, or its officers, directors, employees or representatives, or any dispute with Seller. As used in this agreement, the term "publish or otherwise communicate" shall include without limitation the making of any oral or written comments, statements or presentations to any person or entity or through the use of any Media source, email, the Internet or any ISP, or the posting of any message on any Internet or other message board or platform, or the use of any other type of telephonic or electronic communication;

d) Buyer acknowledges that a breach of any of its obligations set forth in this paragraph will cause immediate and irreparable injury to Seller for which a remedy at law or monetary damages would be inadequate. In the event of any such actual or threatened breach, Seller shall be entitled to temporary, preliminary and/or permanent injunctive relief

   i) restraining such breach

   ii) requiring Buyer to comply with its obligations under this agreement, and

   iii) granting an appropriate decree of specific performance. Such injunctive relief shall be granted without the necessity of

      i) showing actual damages or that monetary damages would not afford an adequate remedy at law, or

      ii) posting any bond or security.

11. Termination

Seller may terminate the Order for Buyer's default in the event Buyer

a) fails to make any payment when due under the Order;

b) breaches any other term of the Order;

c) becomes insolvent or ceases to conduct business; or

d) makes an assignment for the benefit of creditors, or a petition in bankruptcy, reorganization or any similar law is filed by or against Buyer, or Buyer pursues any other remedy under any bankruptcy, insolvency or similar laws, or allows a receiver to be appointed for Buyer's property or business.

12. Governing Law

a) Buyer represents and warrants that, unless it is an individual, Buyer is duly organized, validly existing and in good standing, and that Buyer has the power and authority to enter into this Agreement. This Agreement shall be enforceable against Buyer in accordance with its terms.

b) Buyer hereby authorizes Seller to obtain credit bureau reports and make such other credit inquiries as Seller deems necessary. Buyer shall provide Seller with such corporate resolutions, opinions of counsel, financial statements, executed software sublicense agreements, and other documents (including UCC Financing Statements and other documents for filing and recording) as Seller shall request from time to time.

c) If more than one Buyer is named in this Agreement, the liability of each shall be joint and several. Buyer represents and warrants that Goods are being rented or purchased hereunder, as applicable, for business purposes and not for personal, family or household purposes. Any failure of Seller to require strict performance by Buyer or any waiver by Seller shall not be construed as a waiver of any other breach of the same or any other provision.

d) Seller's Quotations, Buyer's Orders, and Seller's Acknowledgments, if any, shall be governed and interpreted in all respects in accordance with the laws of the State of New Jersey without giving effect to any conflict of law rules. Except for injunctive relief sought by Seller, Seller and Buyer expressly agree that any dispute or claim arising out of, resulting from, or in connection with any Quotations or Orders shall be brought exclusively in the state or federal courts of Passaic County, New Jersey. Buyer waives its right to a jury trial, and Seller and Buyer expressly consent, unconditionally and irrevocably, to the exclusive jurisdiction of such New Jersey courts and to service of process by certified mail, return receipt requested, or by any manner authorized by the New Jersey Rules of Court.

13. General

a) Buyer shall not transfer or assign in whole or in part any Order or any rights, interests or duties there under;

b) in the event any term of Seller's Sales Terms is determined to be invalid, unenforceable or void by a court of competent jurisdiction, such term shall be deemed deleted and the remaining terms shall continue in full force and effect;

c) no delay or omission by Seller in exercising any rights or remedies under any Order shall operate as a waiver of such right or remedy or any other right or remedy. No waiver by Seller of any breach under any Order shall be deemed a waiver of any other or subsequent breach;

d) no modification, amendment, change, alteration, addition, deletion or waiver of any Sales Terms or any provision of any Quotation or Order shall be binding on Seller unless set forth in writing and signed by an authorized representative of Seller;

e) all notices required or permitted to be given under any Order shall be in writing and shall be deemed to have been given if delivered by hand, or by certified mail, return receipt requested, with postage prepaid, addressed to the party at the address set forth in the Order;

f) the Sales Terms herein represent the entire understanding of the parties with respect to the subject matter hereof and supersede and take precedence over any and all prior oral or written writings, representations, negotiations, agreements or understandings; and

g) all Orders shall be binding upon Seller and Buyer and their respective heirs, executors, legal representatives, and successors and assigns.