



## Terms & Conditions of Sale

## TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale (the "Terms") are the only terms which govern the sale of the goods ("Goods") and services ("Services") by Capewell Aerial Systems LLC, an Ohio limited liability company and its affiliates (collectively, "Capewell"), to any purchaser, or in the case of sample products or material, the recipient thereof ("Buyer").

**1. GENERALLY** – The accompanying quotation, order confirmation or sales acknowledgment (the "Confirmation") and these Terms (collectively, this "Agreement" and the order to which this Agreement relates, the "Order") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, except to the extent a separate confidentiality agreement has been entered into by the parties. In the event of a conflict between these Terms and the Confirmation, the Confirmation shall prevail. These Terms prevail over any of Buyer's general terms and conditions of purchase, including any requirements related to U.S. Government contracting or clauses from Buyer's customer contracts, regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of the Order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. If an Order is deemed to be an offer by Buyer, Capewell's acceptance of such offer is expressly conditioned on Buyer's assent to these Terms. Any additional, different, or conflicting terms proposed by Buyer in any offer, acceptance, confirmation (including any Buyer purchase order or specifications and any clauses or contract requirements incorporated by reference, such as Federal Acquisition Regulation clauses) or otherwise, (a) are requests for material alterations to these Terms, (b) are hereby rejected and objected to by Capewell, and (c) will not be binding in any way on Capewell. The parties may only amend the Agreement in a writing executed by both parties. Notwithstanding anything to the contrary contained in this Agreement, Capewell may, from time to time, change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Confirmation.

**2. PRICE; PAYMENT** – The Goods and Services are hereby offered for sale at prices to be established by Capewell (the "Prices") and are subject to market adjustments, including the Material Adjustments set forth below. If the Prices should be increased by Capewell before Delivery to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Capewell on the basis of such increased prices. Buyer shall reimburse Capewell for reasonable travel and out-of-pocket expenses incurred by Capewell in connection with the performance of the Services. Further, Buyer may be charged additional fees and expenses not noted on the Confirmation at the discretion of Capewell, including, without limitation, additional cleaning or oiling charges with respect to Buyer-supplied materials in connection with the Goods or Services provided. Unless otherwise specified on Capewell's invoice, the Confirmation, or otherwise agreed to by the parties in writing, Buyer will pay for all Goods and Services on a net thirty (30) day basis. Buyer shall make all payments hereunder in US dollars. Capewell reserves the right to assess reasonable interest charges on any amounts not paid by the date such payments are due. Buyer shall reimburse Capewell for all costs incurred in collecting any late payments, including, without limitation, actual attorneys' fees. In addition to all other remedies available under these Terms or at law (which Capewell does not waive by the exercise of any rights hereunder), Capewell shall be entitled to suspend the Delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder. All orders are subject to credit approval by Capewell. Capewell reserves the right to withhold shipment or to require other adequate assurances of performance of Buyer's payment obligations as Capewell in its discretion may require, notwithstanding any Confirmation issued by Capewell. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Capewell, whether relating to Capewell's breach or otherwise.

**3. PRICE ADJUSTMENTS** – The Prices have been calculated based on the current prices for the raw or other materials ("Materials") that are used in connection with the Goods and Services. However, the market for the Materials is considered to be volatile, and sudden price increases could occur. Capewell agrees to use its commercially reasonable efforts to obtain the lowest possible prices from available Material suppliers. However, at any time during this Agreement, including after the Confirmation, Capewell shall be entitled to a price adjustment for changes in the price of Material (a "Material Adjustment"). A Price Adjustment shall be effective upon written notice from Capewell to Buyer and Buyer agrees to pay such Material Adjustment. The Material Adjustment shall not exceed the actual surcharge and/or Material price increase experienced by Capewell. Upon request, Capewell will provide Buyer with documentation to support any Price Adjustment in accordance with this Section.

**4. TAXES** – All Prices are exclusive of any federal, state, or local sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of Goods or Services required in the performance of any Order. Capewell will list separately on its invoice any such taxes applicable to any such Goods or transaction, and payable by Buyer, with respect to which Buyer does not furnish to Capewell evidence of exemption.

**5. DELIVERIES** – Capewell will use commercially reasonable efforts to meet the delivery dates, specifications, and quantities as set forth in the Order; however, the parties acknowledge and agree that delivery dates shall be estimates only. Capewell will not be liable for damages or delays in Delivery. Unless otherwise agreed to in writing by the parties, Capewell shall deliver the Goods (the “Delivery”) to the address specified in the Order pursuant to the shipping term used for such Delivery pursuant to Section 7 (the “Delivery Point”) using Capewell’s standard methods for packaging and shipping such Goods. Buyer shall be responsible for all loading costs and shall provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point, and will unload and release all transportation equipment promptly so Capewell incurs no demurrage or other expense. Capewell may, in its sole discretion, without liability, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the Order. If Capewell delivers to Buyer a quantity of Goods of up to ten percent (10%) more or less than the quantity set forth in the Order, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Order adjusted pro rata. If for any reason Buyer fails to accept Delivery of any of the Goods on the date fixed pursuant to Capewell’s notice that the Goods have been delivered at the Delivery Point, or if Capewell is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses, or authorizations, then: (a) risk of loss to the Goods shall pass to Buyer; (b) the Goods shall be deemed to have been delivered; and (c) Capewell, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

**6. NON-DELIVERY** – Capewell’s records as to the dispatch of Goods to the Delivery Point are conclusive evidence of Delivery unless Buyer can provide conclusive evidence proving the contrary. Capewell shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Capewell of the non-delivery within ten (10) days of the date when the Goods would in the ordinary course of events have been delivered. Any liability of Capewell for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer’s exclusive remedies for any non-delivery of Goods. Notwithstanding anything to the contrary contained herein, if for any reason shortages occur in Capewell’s supply of the Goods or Materials, Capewell may allocate the Goods and/or Materials, in which case Capewell shall prorate the supply of Goods and/or Materials in a manner that in Capewell’s sole judgment is fair, taking into account factors Capewell determines, in its sole discretion, to be relevant.

**7. SHIPMENT** – Delivery and risk of loss of the Goods shall be made FOB origin if domestic and Ex Works Delivery Point (Incoterms® 2020) if international, unless otherwise stated on the Order. Unless otherwise agreed to by the parties in writing, Buyer shall be responsible for insuring the Goods once shipped.

**8. BUYER’S ACTS OR OMISSIONS** – If Capewell’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, representatives, subcontractors, consultants, or employees, Capewell shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

**9. TITLE AND SECURITY** – Unless otherwise agreed to by the parties in writing, title and risk of loss passes to Buyer upon Delivery of the Goods at the Delivery Point. As collateral security for the payment of the Price of the Goods, Buyer hereby grants to Capewell a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Connecticut Uniform Commercial Code. Capewell may file a financing statement for such security interest and Buyer shall execute any such statements or other documentation necessary to perfect Capewell’s security interest in such Goods.

**10. LIMITED WARRANTIES** –

(a) Capewell warrants to Buyer that at the time of Delivery, Capewell will have good title to all Goods manufactured by Capewell and supplied to Buyer and the right to convey title to such Goods to Buyer free and clear of all liens. Capewell further warrants to Buyer that, for a period of one (1) year from the Delivery date, all Goods manufactured by Capewell will materially conform to the specifications, drawings, samples, or other description furnished or specified by Buyer and agreed to in writing by Capewell, and will be free from material defects in material and workmanship. Capewell further warrants that any Services it provides hereunder will be performed in a workmanlike manner in accordance with generally recognized industry standards for similar services. The warranties stated in this Section are the only representations and warranties Capewell has given Buyer in connection with the provision of Goods or Services to Buyer. THIS ONE YEAR WARRANTY IS LIMITED TO ITS PRECISE TERMS AND PROVIDES EXCLUSIVE REMEDIES, EXPRESSLY IN LIEU OF ALL OTHER REMEDIES OF ANY NATURE WHATSOEVER, INCLUDING CLAIMS FOR SPECIAL OR CONSEQUENTIAL DAMAGES. CAPEWELL NEITHER MAKES NOR ASSUMES ANY OTHER WARRANTIES OR GUARANTEES WHATSOEVER, WHETHER EXPRESSED OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NEITHER BUYER NOR ANY SUB-DISTRIBUTOR, REPRESENTATIVE, AGENT OR DEALER UNDER IT, NOR ANY OTHER PERSON, IS AUTHORIZED TO ASSUME FOR CAPEWELL ANY OBLIGATION OR LIABILITY NOT STRICTLY IN ACCORDANCE WITH THE FOREGOING, OR TO REPRESENT THAT CAPEWELL MAKES ANY OTHER WARRANTY OR GUARANTEE. All other warranties Capewell or anyone purporting to represent Capewell may have given, or which may be provided or implied by law or commercial practice, ARE HEREBY EXPRESSLY EXCLUDED. Capewell shall not be liable for a breach of the warranties set forth in this Section unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Capewell within five (5) days of the time when Buyer discovers or ought to have discovered the defect and such notice occurs within one (1) year from the Delivery date or the performance of the Services; (ii) if applicable, Capewell is given a reasonable opportunity after receiving the notice of breach of the warranty to examine such Goods and Buyer (if requested to do so by Capewell) returns such Goods to Capewell's place of business at Capewell's cost for the examination to take place there; and (iii) Capewell reasonably verifies Buyer's claim that the Goods or Services are defective or otherwise breach the warranties in this Section. Capewell shall not be liable for a breach of the warranties set forth in this Section if: (x) Buyer makes any further use of such Goods after giving Capewell notice of the warranty breach; (y) the defect arises because Buyer failed to follow Capewell's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (z) Buyer alters or repairs such Goods without the prior written consent of Capewell. Subject to the foregoing limitations, with respect to any Goods or Services that are defective or otherwise breach the warranties in this Section, Capewell shall, in its sole discretion, either (1) repair or replace such Goods (or the defective part), or repair or re-perform the applicable Services or (2) credit or refund the price of such Goods or Services at the pro rata contract rate provided that, if Capewell so requests, Buyer shall, at Capewell's expense, return such Goods to Capewell. **THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND CAPEWELL'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN THIS SECTION.**

(b) Products manufactured by a third party ("Third-Party Products") shall constitute Goods for purposes of this Agreement and may contain, be contained in, incorporated into, attached to or packaged together with the Goods. Third-Party Products are not covered by the warranty in this Section, whether supplied as stand-alone items or incorporated into, attached to, or packaged with other Goods. For the avoidance of doubt, CAPEWELL MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Notwithstanding anything herein to the contrary, in circumstances where Capewell takes possession of Third-Party Products for the purpose of reshipment to Buyer (rather than directing drop-shipment from the manufacturer), Buyer acknowledges and agrees that (A) Capewell is acting solely as a distributor with respect to such Third-Party Products; (B) Capewell shall have no obligation to conduct, and shall not be deemed to have conducted, any technical, operational, airworthiness, conformity, or functional inspection, certification, or testing of such Third-Party Products or to assess compliance with any specifications or suitability for any particular purpose; and (C) Capewell shall have no liability under any theory of strict liability, negligence, product liability, misrepresentation, or otherwise arising out of or relating to any Third-Party Product. Capewell's sole and exclusive obligation with respect to Third-Party Products shall be to use commercially reasonable efforts to assign or pass through any manufacturer warranties actually received by Capewell, to the extent assignable. Capewell makes no representation that any such warranty exists or is

assignable. Buyer acknowledges and agrees that any claims relating to defects, performance, airworthiness, recalls, service bulletins, or warranty matters concerning Third-Party Products shall be made directly to the manufacturer, and Capewell shall have no liability arising from or relating to such Third-Party Products.

**11. NON-CONFORMING GOODS** – Upon Delivery, Buyer shall immediately inspect the Goods. Unless Buyer provides Capewell with written notice of any claim for shortage, defect, or nonconformity in the Goods within ten (10) days after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer and Buyer's failure to provide such notice shall be deemed to constitute a waiver of any such claim. If Buyer timely notifies Capewell of any nonconforming Goods, Capewell shall, in its sole discretion, (a) replace such nonconforming Goods with conforming Goods, or (b) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer's exclusive remedies for the Delivery of nonconforming Goods. For avoidance of doubt, this Section 11 applies only to Goods manufactured by Capewell and expressly excludes any Third-Party Products (as defined in Section 10(b)). With respect to Third-Party Products, Buyer's sole remedies shall be those available, if any, from the applicable manufacturer pursuant to Section 10(b), and Capewell shall have no replacement, refund, credit, or other obligation under this Section 11.

## **12. TRADE COMPLIANCE**

(a) **EXPORT CONTROL REGULATIONS** – The Goods that are the subject of this Agreement and related technology are subject to export and re-export restrictions under U.S. and other countries' export control regulations, including, without limitation, the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, regulations of the U.S. Office of Foreign Asset Control and comparable laws and regulations of other countries, which may require U.S. or other government approval for any re-export or retransfer ("Export Control Regulations"). Buyer warrants that it (i) will adhere to and comply with (x) all applicable Export Control Regulations (including any regulations that require a license or other governmental authorization prior to exporting, re-exporting, or retransferring the Goods) and (y) any applicable terms, conditions, procedures and documentation requirements made known to Buyer that may be promulgated by Capewell from time-to-time to comply with the Export Control Regulations; and (ii) will not, directly or indirectly, through a third party, ship Capewell materials to Cuba, Iran, Libya, North Korea, Syria, Russia, or any other country subject to trade embargoes in violation of Export Control Regulations. Buyer acknowledges that Capewell will not proceed with a shipment when Capewell knows that the Capewell products in that shipment are destined for a sanctioned country, a prohibited end-use or end-user, or any other prohibited destination. Buyer represents that neither Buyer nor any of its principals, officers, or directors, or any person or entity known to Buyer to be directly involved in this transaction as freight forwarder, customer, end-user, consultant, agent or otherwise is designated on any of the U.S. government restricted parties lists, including, without limitation, the U.S. Commerce Department Bureau of Industry and Security Denied Persons List, Entity List or Unverified List, the U.S. Treasury Department Office of Foreign Asset Controls Specially Designated National and Blocked Persons List, the U.S. State Department Directorate of Defense Trade Controls Debarred Parties List or restricted parties lists of any country having jurisdiction over Buyer or the transaction involving the Goods that are the subject of this document or related technology.

(b) **ANTIBOYCOTT PROVISIONS** – Buyer will not request of Capewell information or documentation where the purpose of such request is to support, give effect to or comply with a boycott of any country in contravention of the laws or policies of the United States, including but not limited to the Arab League boycott of Israel. Capewell hereby rejects any such request by Buyer and will report receipt of any such request to the relevant U.S. government office, as required by law.

(c) **ANTICORRUPTION AND ANTIBRIBERY** – In relation to any transaction involving the Goods that are the subject of this Agreement or related technology, Buyer shall not seek to obtain or retain business, or gain any other advantage by making or promising, or offering to make, any payment of money, or by providing, promising or offering to provide anything of value, directly or indirectly, to: (i) any government official; or (ii) any non-governmental person, in either case with the intent that such official or person will perform their responsibilities improperly. Buyer warrants that it will comply with the anticorruption laws, anti-kickback laws, and anti-bribery laws of any country having jurisdiction over Buyer or the transaction involving the Goods that are the subject of this Agreement or related technology and will in all cases comply with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and U.S. federal and applicable state law prohibiting kickbacks.

(d) **NONCOMPLIANCE** – In the event that Capewell reasonably believes that any provision of this Section has

or may have been breached, Buyer shall cooperate fully with Capewell's investigation to clear the matter and Capewell shall not be obligated to sell or provide Goods or technology or take any other act in furtherance of any transaction or agreement while such investigation is pending, and such suspension or forbearance by Capewell shall not constitute breach of any obligation in respect of the transaction to which this document applies or otherwise.

**13. COMPLIANCE WITH LAWS** – Buyer shall comply with all applicable laws, regulations, and other legal requirements. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Capewell may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

**14. LIMITATION OF LIABILITY –**

(a) CAPEWELL'S LIABILITY FOR GOODS MANUFACTURED BY CAPEWELL UNDER ALL THEORIES OF LIABILITY SHALL BE LIMITED TO REPAIRING OR REPLACING THOSE FOUND BY CAPEWELL TO BE DEFECTIVE, OR AT CAPEWELL'S OPTION, TO REFUNDING THE PURCHASE PRICE OF SUCH GOODS. AT CAPEWELL'S REQUEST, BUYER WILL PERMIT CAPEWELL OR ITS DESIGNEE TO INSPECT ANY ALLEGEDLY DEFECTIVE GOODS INCLUDING SHIPMENT OF SUCH ALLEGEDLY DEFECTIVE GOODS TO THE LOCATION SPECIFIED BY CAPEWELL AT CAPEWELL'S COST.

(b) IN NO EVENT SHALL CAPEWELL'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO CAPEWELL FOR THE GOODS AND SERVICES SOLD HEREUNDER.

(c) CAPEWELL SHALL HAVE NO LIABILITY TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE GOODS, INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON CAPEWELL HEREUNDER OR IN CONNECTION HERewith, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CAPEWELL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(d) CAPEWELL EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY IMPERMISSIBLE ENHANCEMENTS, MODIFICATIONS AND/OR ALTERATIONS OF THE GOODS BY ANY PARTY, INCLUDING THE BUYER OR ANY END-USER OF THE GOODS.

(e) WITH RESPECT TO ANY THIRD-PARTY PRODUCTS, INCLUDING THOSE TAKEN INTO POSSESSION BY CAPEWELL FOR RESHIPMENT, CAPEWELL IS NOT THE MANUFACTURER, DESIGNER, OR PRODUCER OF SUCH PRODUCTS AND SHALL NOT BE DEEMED A MANUFACTURER, DESIGNER, PRODUCER, OR SELLER FOR PURPOSES OF ANY APPLICABLE LAW. CAPEWELL SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY MANUFACTURING DEFECT, DESIGN DEFECT, FAILURE TO WARN, AIRWORTHINESS ISSUE, PERFORMANCE FAILURE, RECALL, SERVICE BULLETIN, AIRWORTHINESS DIRECTIVE, FIELD CORRECTION, OR ANY OTHER PRODUCT-RELATED CLAIM ARISING OUT OF OR RELATING TO ANY THIRD-PARTY PRODUCT, WHETHER ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), PRODUCT LIABILITY, STATUTE, OR OTHERWISE. CAPEWELL SHALL HAVE NO DUTY TO INSPECT, TEST, VERIFY, CERTIFY, AUDIT, OR EVALUATE ANY THIRD-PARTY PRODUCT FOR COMPLIANCE WITH SPECIFICATIONS, REGULATORY REQUIREMENTS, OR SUITABILITY FOR ANY PARTICULAR PURPOSE. TO THE EXTENT CAPEWELL IS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION TO HAVE LIABILITY ARISING SOLELY FROM ITS OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE HANDLING OR RESHIPMENT OF A THIRD-PARTY PRODUCT (AND NOT FROM ANY DEFECT OR CONDITION OF SUCH THIRD-PARTY PRODUCT), CAPEWELL'S AGGREGATE LIABILITY SHALL NOT EXCEED THE FEES ACTUALLY RECEIVED BY CAPEWELL SOLELY FOR THE HANDLING OR RESHIPMENT OF THE APPLICABLE THIRD-PARTY PRODUCT, EXPRESSLY EXCLUDING ANY AMOUNTS PAID OR PAYABLE FOR THE THIRD-PARTY PRODUCT ITSELF.

**15. INDEMNITY** – Buyer shall indemnify and hold Capewell and its directors, officers, employees, agents, suppliers, parent companies, affiliates, subsidiaries, successors and assigns harmless from and against any and all fines, penalties, suits, actions (threatened or actual), claims, liabilities, judgments, losses, injuries, death, damages, deficiencies, interest, award, costs, expenses (including actual attorneys' fees and professionals' fees), liability, costs associated with enforcing any right to indemnification hereunder and costs associated with pursuing any insurance providers resulting or arising from (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the Goods or any product or waste derived therefrom, (c) Buyer's enhancement, modification or other alteration of the Goods, (d) Buyer's discharge or release of the Goods or any product or waste derived therefrom into water, onto land or into the air, (e) Buyer's exposing any person (including Buyer's employees) to the Goods or any product or waste derived therefrom, including failure to warn of such exposure, (f) the transportation of the Goods to Buyer after tender of the Goods by Capewell to the carrier at Capewell's shipping point, (g) the infringement (whether actual or alleged) of any intellectual property of any third party with respect to any goods for which Buyer has supplied manufacturing specifications, (h) Buyer's failure to provide end-users with product warnings in accordance with instructions provided by Capewell, (i) any allegation that Capewell is a manufacturer of any Third-Party Product, or (j) the breach of Section 23 of these Terms. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused solely by Capewell's gross negligence or willful misconduct but shall apply where there is concurrent negligence or willful misconduct on the part of Capewell and Buyer in proportion to Buyer's negligence or willful misconduct.

**16. PRODUCT WARNINGS** – Buyer shall be required to provide all end-users with any warnings issued by Capewell with respect to the Goods, whether such warnings are provided at the time of purchase or at any time thereafter. For the avoidance of doubt, Buyer shall indemnify Capewell in accordance with Section 15 for all losses Capewell may incur for Buyer's failure to comply with this Section.

**17. TERMINATION** – In addition to any remedies that may be provided under these Terms, Capewell may at any time and for any reason terminate this Agreement with immediate effect upon written notice to Buyer. In addition, Capewell specifically reserves the right to terminate this Agreement for cause if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) 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.

**18. FORCE MAJEURE** – Except for the payment of monies owed, neither party will have any liability for any breach or failure to perform that is the result of an event, condition or circumstance beyond that party's reasonable control, including, without limitation, (a) acts of God; (b) flood, fire, earthquake, pandemic, epidemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) similar events. If a party becomes aware of any such event, condition or circumstance, then such party will promptly advise the other party and both parties will cooperate to ameliorate the circumstance or condition as quickly as possible.

**19. GOVERNING LAW** – This Agreement shall be governed, interpreted and construed by and in accordance with the internal substantive laws of the State of Connecticut, United States of America, without regard to the conflict of laws provisions thereof, and expressly excludes the United Nations Convention on Contracts for the International Sale of Goods. Any dispute arising hereunder shall be resolved in the United States federal courts serving the State of Connecticut, U.S.A. or in the courts of the State of Connecticut, as may be applicable. Such courts shall have exclusive jurisdiction and venue for resolution of all such disputes and the parties hereto do hereby irrevocably submit to such jurisdiction and venue and waive any objection to the contrary hereafter.

**20. AMENDMENT AND MODIFICATION** – The Agreement may be amended, modified or waived only by a written instrument that refers expressly to this paragraph and is signed by an authorized representative of Capewell. E-mails and electronic on-line, internet or other terms of Buyer shall not be deemed a means of modifying or amending these Terms.

**21. WAIVER** – No waiver by Capewell of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Capewell. No failure to exercise, or delay in exercising, any right, remedy, power

or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**22. NOTICES** – All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), electronic mail (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**23. CONFIDENTIAL INFORMATION** – All non-public, confidential or proprietary information of Capewell, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Capewell to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Capewell in writing. Upon Capewell’s request, Buyer shall promptly return all documents and other materials received from Capewell. Capewell shall be entitled to injunctive relief for any violation of this Section. This Section 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. The parties agree that Capewell would be irreparably damaged and may have no adequate remedy at law for Buyer’s breach of this Section. Accordingly, Buyer hereby: (a) consents to the entry of an immediate ex parte injunction, temporary restraining order, and/or permanent injunction to enforce the provisions of this Section, in addition to any other remedies available at law or in equity; and (b) waives in any legal proceeding the defense that Capewell has adequate remedies available at law.

**24. ASSIGNMENT** – Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Capewell. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**25. RELATIONSHIP OF THE PARTIES** – The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**26. NO THIRD-PARTY BENEFICIARIES** – This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

**27. SEVERABILITY** – If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**28. SURVIVAL** – Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.