

**Delta Electric Motors, Inc. ("Company")**  
**TERMS AND CONDITIONS OF SALE FOR PRODUCTS AND/OR SERVICES**

**1. Acknowledgements**

Sale of any products and/or services pursuant to this contract, or any purchase order, quotation, proposal, acknowledgement or other type of agreement between the parties ("Order(s)") is expressly conditioned on Buyer's assent to the terms and conditions contained or referenced herein. "Acceptance" of an Order for purposes herein shall be evidenced by an express written agreement, shipment of products, commencement of services or otherwise, and shall constitute consent by the Buyer to be bound by these terms and conditions. All other additional, different and/or conflicting terms and conditions are expressly rejected, unless expressly agreed to in writing by Company. In the event Company expressly agrees in writing to different or additional terms regarding a particular Order, such agreement is limited to that Order, and does not apply to any present or subsequent Orders between the parties unless expressly agreed to in writing by Company. Unless otherwise specifically agreed to in writing by Company, prior to Acceptance by Buyer, any terms offered under an Order by Company shall expire within thirty (30) days from its date, and may be modified or withdrawn by Company prior to receipt of Buyer's Acceptance.

**2. Payment and Invoices**

Except as otherwise stated by Company in an Order, Buyer shall pay Company according to the attached Payment Rider, without any right of set-off for any reason, including without limitation, set-off under other Orders with Company. In the event that an Order does not stipulate payment terms, and a Payment Rider is not attached hereto, the payment terms will be as follows: Upon receipt of an invoice, the full amount net 30 days.

Where applicable, transportation costs shall be invoiced separately upon shipment of an Order, and payable on demand.

b. In the event the parties agree to suspend performance under an Order for any reason, Buyer shall make payment to Company based on the foregoing terms based on products delivered or services performed prior to such suspension in accordance with the terms herein.

c. In the event that Buyer fails to strictly comply with the payment terms set forth herein as applicable, Company may suspend performance under the respective Order, and any future Orders. Buyer shall bear all costs incurred by Company as a result of such suspension, which shall be due and payable from the date of the invoice as submitted by Company. Company's performance shall be extended according to the period for which the Order was suspended. If Buyer does not immediately correct its non-compliance with the payment terms in a timely fashion, Company may terminate the Order directly affected. Company's termination charges shall be born exclusively by Buyer upon presentation of a Company invoice. In addition, Buyer shall pay interest to Company at the rate of one and one-half percent (1 ½%) per month. The right of Company to charge interest hereunder shall not be deemed as a waiver to receive payment in accordance with the foregoing schedule. The foregoing remedies are in addition to all other remedies Company may have hereunder or at law.

d. If, in the opinion of the Company, the financial condition of the Buyer does not justify continuation of performance under an Order(s), Company may require full or partial payment in advance, or any other payment terms satisfactory to Company, or Company may immediately terminate the Order.

e. Subject to applicable law, in the event of an insolvency, bankruptcy or default, voluntarily or involuntarily, of the Buyer, Company shall be entitled to cancel any outstanding Order, to receive reimbursement for its reasonable cancellation charges, and to retain possession of products serviced by Company until the charges for the services are paid.

f. If services are performed at the Company's facility, Buyer agrees that, in addition to any right of lien which Company may be entitled to as a matter of law, Company shall be entitled to a general lien on the Buyer's equipment in Company's possession, including any of Buyer's equipment serviced which has already been paid for by Buyer, to the extent of the unpaid amount owed by Buyer under any particular Order. If Buyer fails to fulfill any condition of its payment obligations, Company may suspend or terminate subsequent performance obligations under the respective Order, or any future Order. Buyer agrees to grant to Company written power of attorney status in order for Company to enforce its rights under this section.

g. Subject to all applicable laws, if the charges due are not paid within ninety (90) days from receiving Company's invoice, and the Company has possession of Buyer's equipment, then Company shall be entitled to sell the product at a public or private sale, upon written notice to the Buyer, in addition to any other remedy available to Company, at law or otherwise.

**3. Scope of Work/Specifications**

Company has interpreted the applicable specifications for the scope of work as provided by Buyer to the best of its ability, and has applied standards as it deems appropriate. If the Buyer has not supplied any specifications in advance of an Order, then Company will provide products and/or services according to specifications and standards that Company deems appropriate. Buyer acknowledges the same and will only hold Company liable for its reasonable interpretations of the specifications, in Company's sole judgment. The mutually agreed to scope of work/specifications outlined between the parties constitutes the entire workscope. Items not identified in the mutually agreed to scope of work/specifications will not be provided and are considered "extra work" requiring the written mutual agreement of both parties before the same can be implemented. Any delay in Buyer's approval of the final scope of work/specifications will be at Buyer's sole risk, and Buyer shall be liable for any costs associated therewith.

**4. Inspection and Testing**

Buyer shall be admitted at all reasonable times to the facilities of Company for the purpose of observing inspection and testing of products and/or services to be provided under any Order. Such access shall be limited to areas directly concerned with Buyer's Order, and shall not include restricted areas where proprietary work of Company is being conducted. All such inspections shall be in

accordance with Company's standard policies and procedures. In no event shall delivery be delayed by such inspections. Buyer will bear all costs of excessive inspection, which will be in addition to the price under the Order, and payable on demand to Company, including all costs associated with any delay resulting therefrom. "Excessive inspection" for purposes of this section shall mean inspection and tests beyond what Company customarily permits in the normal course of its business, as determined by Company's sole judgment.

e Buyer's equipment shall be with the Buyer at all times (including storage by Company), and all insurance for the same shall be maintained solely by Buyer. Risk of loss or damage to any product(s) furnished by the Company under the contract shall pass to Buyer F.O.B. the Company's facility, as designated in the Order, when the products are ready for shipment to Buyer. Partial shipments shall be permitted. Title to all products and/or services furnished by Company shall pass to Buyer upon payment in full under the respective Order. Subject to Company's lien rights under the terms set forth herein, or arising under law, title and right of possession of Buyer's equipment shall remain with Buyer. Company shall retain title to any Company equipment loaned or made available to Buyer. All scrap materials resulting from any services provided to Buyer shall be the property of Company. Buyer shall also reimburse Company, on demand and in addition to the price under the Order, for any disposal costs incurred by Company related to the fulfillment of the Order by Company. Shipment, delivery and completion times are estimations and are contingent upon prompt receipt by Company of all information and approvals necessary to proceed with the Order(s) without interruption. Unless stipulated by Buyer, in writing, that an early shipment is not permissible, the Company reserves the right to ship prior to the applicable shipping date. In the event that Buyer is not able to receive products and/or service to Buyer's equipment in Company's possession ready for shipment to Buyer, Company may store the same at Buyer's sole expense, and if risk of loss has not yet passed to Buyer, it shall do so immediately upon storage of such products. At such time when products of Company and/or equipment of Buyer is ready for shipment to Buyer, Company reserves the right to re-inspect such products and/or work performed to ensure it meets Company's standards as originally completed, and any costs associated with such re-inspection and any re-performance of work related thereto, shall be born entirely by the Buyer. Storage of any products and/or equipment will not delay payment under the payment schedule set forth hereunder.

## **5. Warranty**

a. Company warrants for each Order: (i) the products, as provided by Company, to be free from defects in materials, workmanship and title, and shall conform substantially to mutually agreed upon specifications; and (ii) the services, as provided by Company, to be performed in a professional and workmanlike manner, and will be performed diligently in accordance with mutually agreed to specifications; and (iii) For products of Company exclusively designed by Company for Buyer, or services performed on Buyer's equipment whereby Company has redesigned Buyer's equipment, Company warrants such design will conform substantially to Buyer's specifications, as first approved by Company prior to undertaking such design.

b. The foregoing warranties shall be effective for a period of one (1) year from the date of installation of the products, or one (1) year from the completion of the services under the respective Order, whichever is applicable. In the event Company is not installing the products for the Buyer, in no event will this warranty extend beyond eighteen (18) months from the date of shipment of such products to Buyer. In the event that the products and/or services become defective, as stipulated hereunder, within the warranty period set forth herein, Customer will immediately, but in no event longer than thirty (30) days beyond discovering the same, notify Company of the same. Company, at its sole option and expense, shall repair or replace the defective product(s) and/or re-perform the services accordingly. In correcting a defect, Company shall not be liable for any expense or work in making such correction beyond what Company originally performed under the Order. Repair or replacement of defective products and/or re-performance of the services shall be warranted for the remaining period of the original warranty herein. Company is under no obligation to perform testing after correcting a defect hereunder. In the event that Company is unable to correct any defect as stipulated above, after using its best efforts, Company may refund to Buyer the amount paid by Buyer for such defective product(s) and/or services. The foregoing remedies are the sole and exclusive remedies for defects arising under any Order(s) between the parties.

c. THE FOREGOING WARRANTY IS THE COMPANY'S SOLE AND EXCLUSIVE WARRANTY FOR ALL PRODUCTS AND/OR SERVICES PROVIDED TO BUYER PURSUANT TO ANY ORDER, UNLESS OTHERWISE AGREED TO IN WRITING BY COMPANY, IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR BY OPERATION OF LAW. COMPANY HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), STATUTORY OR OTHERWISE. ORAL STATEMENTS BY COMPANY OR ANY OF ITS EMPLOYEES, AND ANY STATEMENTS IN GENERAL ADVERTISING PAMPHLETS OR OTHER PRINTED MATERIALS DO NOT CONSTITUTE A WARRANTY, AND CUSTOMER ACKNOWLEDGES THAT THEY ARE NOT RELYING ON THE SAME. The foregoing warranty shall not apply to normal wear and tear of any products or services performed on Buyer's equipment (including environmental and operational), erosion, corrosion or exposure to abrasive conditions, improper storage and installation (if done by anyone other than Company), mishandling, misuse, repairs and modifications performed by any third party other than Company, latent conditions, and failure to follow the instructions of Company or any other applicable third party instructions provided for the operation of the same. In the event Company provides products and/or services from a third party, this warranty shall only apply to the extent of Company's workmanship, if Company is installing the third party product, and in such case Company's installation shall be free from defects in workmanship for a period of one (1) year from the date of installation. Otherwise, the sole and exclusive warranty of Buyer for third party products is as provided by such third party, and Company agrees to pass through the same to Buyer upon delivery of the third party products and/or services. Provided, however, if such third party product is an integral part of the overall product and/or service functionality, then this warranty shall apply. Company is under no obligation to identify and repair latent or inherent design defects of any particular products and/or services, unless the same arises within the original scope of work/specifications as mutually agreed upon by the parties. In the event that Buyer insists upon directing the Company regarding the installation or correction of any products and/or services, then such products and/or services will be provided "AS IS" without any warranty. In the event that installation of products or equipment provided to Buyer by Company is to be done by someone other than Company, as a condition to validating the warranty

herein, Company has the option, at Buyer's expense, to require a Company representative to be present at such installation, otherwise this warranty may be voided at Company's option.

#### **6. Limitation of Liability and Disclaimer of Damages**

a. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING HEREUNDER, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF CAPITAL, INTANGIBLES, LOSS OF PROFITS, LOSS OF BUSINESS, REPLACEMENT POWER, LOSS OF OPPORTUNITY, DOWNTIME, AND ANY OTHER SIMILAR DAMAGES WHETHER ARISING IN CONTRACT, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) STATUTORY OR OTHERWISE, UNDER ANY OBLIGATION HEREUNDER (INCLUDING BREACH OF WARRANTY AND INDEMNITY), EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME IN ADVANCE.

b. In no event will Company's liability, or the liability of any of its subcontractors on any tier, with respect to any Order between the parties, for any damages, costs or expenses arising out of the performance or breach hereunder, or use of the products, exceed the amount paid under the Order for which such liability has arisen, whether in warranty, indemnity, contract, tort (including strict liability and negligence), statutory or otherwise. All recovery and remedies hereunder shall be cumulative in nature. Any causes of actions and claims must be brought within one (1) year from the date of the occurrence giving rise to the cause of action or claim. Such cause of action must arise within the applicable warranty period regarding the products and/or services giving rise to such liability, otherwise, Company is not liable.

c. Company's liability hereunder for loss or damage to property of Buyer is limited to the extent that Buyer does not maintain insurance for the same.

#### **7. Changes and Suspension**

a. Buyer may, by written change order, make mutually agreed to changes in the products and/or services to be delivered under any Order. If any such changes result in an increase or decrease in the cost or time required for the performance of an Order, there shall be an equitable adjustment in the Order price and scheduled shipment date. Company is not obligated to undertake any changes requested by Buyer which deviate from the original Order, unless expressly modified in writing and signed by Company.

b. In the event Buyer elects to suspend all, or part of, the work provided by Company, Buyer shall notify Company in writing reasonably in advance of the first day of suspension, but in no event less than ten (10) days unless an emergency dictates otherwise, stating the details of such suspension. Company shall advise Buyer of any costs associated with the suspension, for which Buyer will reimburse Company. In the event that any given suspension shall exceed sixty (60) days, Company shall request permission to resume work. If written authorization is not provided within fifteen (15) days, Company may terminate the applicable Order and Buyer will be obligated to pay Company any reasonable termination charges, upon submission of Company's invoice.

#### **8. Force Majeure**

a. Neither party shall be liable for non-performance or delays under any Order beyond their reasonable control, including without limitation, acts of God, fire, floods, strikes or other labor difficulty, acts of governmental authority, severe weather conditions, earthquakes, war, epidemics, civil unrest, riots, shortages, concealed conditions or otherwise. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay. The Company reserves the right to amend the price for any products and/or services as a result of increased costs from such delay. If delay excused by this section extends for more than one hundred and twenty (120) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party may terminate the contract or any applicable Purchase Order, upon providing thirty (30) days prior notice. Buyer will promptly pay Company's termination charges as invoiced by Company.

b. Although performance under an Order may be delayed due to the foregoing, minor conditions (i.e. rain, snow), or strikes which are caused by or not mitigated by Buyer may require additional charges to be billed to Buyer for expenses incurred by Company. In such instances where the delay is minor and beyond the control of Company, Buyer will be subject to reasonable charges as stated in the Order, or at the time such delay arises, for third party equipment rentals, crews and the like required to be provided by Company for performance under any given Order.

#### **9. Delays**

In the event that Company is delayed in doing work on Buyer's site, or is unable to enter the site or perform its work, due in whole or in part to Buyer, Company may terminate the Order immediately without further obligation and be entitled to, without limitation, all reasonable termination costs and payment for products and/or services delivered for which Company has not received compensation, and any other remedies available at law.

#### **10. Non-Hire**

Without the prior written consent of Company, Buyer shall not, for a period of eighteen (18) months from the termination and/or expiration of all Orders (inclusive of the warranty periods under each Order) with Company (nor shall any of their respective affiliates) directly or indirectly solicit for employment nor employ any of Company's or its affiliated company's officers or employees. In the event Buyer breaches this section, Buyer agrees to indemnify Company for all damages to the fullest extent permitted by law.

#### **11. Penalty Clauses**

The Company will not accept any penalty or liquidated damage clauses of any kind, written or implied, or any liabilities arising from such clauses, unless specifically approved in writing by a duly authorized representative of the Company.

## **12. Price Policy**

The parties will adhere to the contract prices attached. Prices will be subject to review and change annually and in writing.

## **13. Entire Agreement**

The terms and conditions set forth hereunder constitutes the entire understanding between the parties and replaces all contemporaneous and previous understandings between the parties, whether oral or written, as to any Order unless expressly agreed to otherwise by both parties in writing.

## **14. Waiver**

Company's failure to insist upon the enforcement of any obligation or election of right shall not be deemed a waiver of the same, and shall not prevent Company from insisting upon enforcement of the obligation or election of such right in the future under any subsequent Order.

## **15. Default/Breach**

Any breach by Buyer of its obligations hereunder shall be considered a default hereunder. The Buyer shall be liable to the Company for any costs and reasonable attorneys' fees to enforce the provisions of these terms and/or an Order including, but not limited to, the payment provisions hereunder, should the Buyer default or breach any provision under these terms and conditions. In the event of a default hereunder, the Company shall be entitled to, without limitation, reasonable termination costs in addition to all amounts for products and/or services provided for which payment has not been received, and any other remedies available at law.

## **16. Enforceability**

If any provision of these terms and conditions or an Order is or becomes at any time unenforceable or invalid, no other provision of this order shall be affected thereby and the remaining provisions of the order shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted in the order.

## **17. Governing Law**

The terms set forth herein and under any Order shall be interpreted and governed according to the laws of the State of Washington

## **18. Containers**

An extra charge will be made for returnable containers and special shipping devices. Refund will be made only if returned in good condition to the factory or other point designated by the Company within ninety (90) days from the date of original shipment, charges prepaid.

## **19. Company Approval**

All orders or contracts are subject to approval and acceptance in writing by a duly authorized representative of the Company.

## **20. Assignment**

Buyer may not assign this agreement, or any Order, or delegate any duties hereunder without the prior written consent of Company.

## **21. Site Exclusions**

The Company shall not be liable or responsible in any way for any liability arising from any unanticipated, hidden or concealed site conditions of Buyer's site or for injury to person(s) or property which is caused by such condition.

## **22. Confidential Information**

The terms and conditions under this Order, or any other contract, and all financial, statistical, operating and personnel materials and information, including, but not limited to, manuals, designs, drawings and specifications, and computer software programs and related documentation relative to any Order, or utilized in the Company's business or in the business of any affiliate or subsidiary of the Company is acknowledged by the Buyer to be the valuable and confidential property of the Company. The Buyer shall keep such information confidential and shall so instruct its agents, employees and contractors, and shall only disclose the same to those employees or agents who have a need to know the same for the limited purpose of carrying out the Order. The Buyer shall not disclose, photocopy or otherwise duplicate any such materials without the prior written consent of the Company, and all confidential materials shall be returned to Company upon request. Any authorized use of such information by the Buyer shall not affect the Company's ownership or the confidential status of such information. In the event of a violation hereunder, in addition to any other monetary remedies, the parties agree that Company may seek immediate injunctive relief, and Buyer waives any defenses to the same.

## **23. Insurance**

Company maintains insurance it deems appropriate for the products and/or services to be provided under this Order.

If Buyer so requests, the Company shall furnish Buyer with certificates evidencing the foregoing coverage.

## **24. Nuclear Insurance - Indemnity**

**Not applicable.**

## **25. Returned Material**

No material shall be returned without having secured written approval and terms for return from the Company. The return of all material including returnable shipping materials such as cable reels, end plates or covers, oil drums, gas bottles, etc. will not be permitted under any conditions without the Company's properly executed Returned Goods Authority Form. Materials returned without complete identification in accordance with Company's instructions or without charges prepaid will not be accepted. The Company reserves the right to refuse any material returned for credit. Materials returned and accepted will be subject to a minimum twenty-five (25%) percent restocking charge.

## **26. Termination**

After Acceptance by the Company, a purchase contract shall not be terminated, in whole or in part, by the Buyer except by agreement in writing from the Company and any such agreement will be contingent upon payment of reasonable charges based upon expenses already incurred and commitments made by the Company plus a charge of ten (10%) percent of the contract price to compensate for indirect costs resulting from the termination.

#### **27. Taxes**

Prices quoted are exclusive of any present or future federal, state or local sales, use or excise taxes. In states where such sales, use or excise taxes apply, they will be added to the invoice as a separate item unless the customer has furnished an acceptable tax exemption certification from such tax prior to shipment.

#### **28. Independent Contractor**

Company's relationship to the Buyer in the performance of this contract or any Purchase Order is that of an independent contractor. In no event shall Buyer act as an agent or employee to the Company, and Buyer shall be solely responsible for all wages, salaries and other amounts due its employees or agents in connection with this contract and shall be responsible for all reports and obligations respecting them relating to social security, income tax withholding, unemployment, compensation, workers' compensation and similar matters.

#### **29. Compliance with Laws and Standards**

Both parties agree to comply with all applicable federal, state and local laws, regulations, rules and codes. Buyer shall be liable for obtaining all necessary licenses, authorizations and permits related to the products and/or services provided by Company under this Order. If such authorization(s) are revoked, not renewed, denied or delayed, Seller shall not be liable to perform under the respective Order. However, Buyer will still be required to pay Company for any work performed under such Order. Buyer acknowledges that Company is providing products and/or services pursuant to any given Order according to its design criteria, processes, procedures and quality assurance program according to those portions of industry specifications and standards, and any laws and regulations in effect as of the date of such Order which Company has deemed applicable to the products and/or services. In the event that any standards, regulations or laws change during the term of any Order which requires Company to make a change in the product and/or services, then the Order price will be equitably adjusted to reflect such additional costs incurred by Company in effectuating such change. Reasonable adjustments will be made to the shipment date(s) as well. If a change is not possible, Company shall so inform Buyer and Buyer will have the option to terminate the contract upon paying Company for all completed Orders to date, and also paying any reasonable termination charges as determined by Company by submitting an invoice to Buyer.

#### **30. Safety**

Buyer agrees to take all necessary steps to ensure Company's safety while on Buyer's site. This includes the enforcement of Buyer's safety procedures, proper operation of equipment on Buyer's site and proper handling of all hazardous materials.

#### **31. Hazardous Materials**

Unless otherwise stated in the Order, and agreed to by Company in writing, Company shall not be responsible for the handling of hazardous or toxic substances. In the event Company encounters such substances while performing under an Order on Buyer's site, Company shall immediately cease its performance and notify Buyer. Buyer will take all necessary steps to properly handle the hazardous or toxic substances and make the site safe for resumption of work. Buyer agrees to indemnify Company against all loss, damages, costs and expenses associated with the presence of hazardous materials on Buyer's site, including all remediation costs which may be incurred by Company.

#### **32. Termination for Convenience**

Company may terminate this agreement without cause after fully performing under any existing Order, upon providing Buyer with notice thereof. Any agreement by Company to fulfill a given Order does not obligate Company to accept future Orders from Buyer.

#### **33. Dispute Resolution**

In the event a dispute arises between the parties, the parties agree to use their best efforts to resolve the same according to the following levels and corresponding time periods below. Any resolution shall be consistent with the terms of the contract. To the extent the contract needs to be modified, the parties shall do so in a formal written amendment, and all other terms and conditions shall remain in full force and effect. Any resolution reached by the parties shall be documented and final as to the issue disputed. Except for equitable relief sought for a violation under Section 23-Confidential Information, or where other action is necessary to avoid a serious and immediate threat of injury or health risk, or where it is impossible to continue performance because the performance itself is the subject of the dispute, the parties agree to continue performance hereunder, including without limitation, the continued payment by Buyer of any amounts due. In addition, except for those instances where equitable relief is sought for a violation under Section 23-Confidential Information, both parties must first use the dispute resolution process provided herein, otherwise it will be deemed a default hereunder. The Levels for resolving a dispute are as follows, in escalating order:

Level 1: Company's Operations/Plant Manager of facility from where products or service originates, and Company's counterpart within Buyer's organization, will attempt to resolve the dispute within ten (10) days from the date of its occurrence.

Level 2: Company's regional vice president/general manager responsible for the products or services subject to the dispute, and Company's counterpart within Buyer's organization, will attempt to resolve the matter within ten (10) days from receiving notice that the dispute has not been resolved at Level 1, but in no event longer than twenty (20) days from the date the dispute originated.

Level 3: Company's vice president of the BDU responsible for the products or services which are subject to the dispute, and Company's counterpart within Buyer's organization, will attempt to resolve the dispute within five (5) days of receiving notice

that the dispute has not been resolved at Level 2, but in no event longer than twenty-five (25) days from the date the dispute originated.

Level 4: Company's president of the BDU responsible for the products or services which are subject to the dispute, and Company's counterpart within Buyer's organization, will attempt to resolve the dispute within five (5) days of receiving notice that the dispute has not been resolved at Level 3, but in no event longer than thirty (30) days from the date the dispute originated.

Level 5: Company and Buyer's CEO, or equivalent, will attempt to resolve the matter within five (5) days of receiving notice that the dispute has not been resolved at Level 4, but in no event longer than thirty-five (35) days from the date the dispute originated.

If the parties cannot resolve a dispute in accordance with the foregoing, the parties will mutually agree to arbitration proceedings in accordance with the standards set forth by the American Arbitration Association. The parties shall mutually agree upon an arbitrator to mediate the dispute. All costs associated with the arbitration shall be shared equally between the parties.