

CMS CIRCUITS, INC.

GENERAL TERMS AND CONDITIONS OF SALE

DEFINITIONS: As used throughout these General Terms and Conditions of Sale ("Terms"), the following capitalized words shall have the following definitions unless otherwise specifically stated:

- (a) "Seller" means CMS Circuits, Inc. which is providing the Product subject to these Terms;
- (b) "Buyer" means the legal person or entity contracting with the Seller in this Order;
- (c) "Order" means the contractual instrument whereby Buyer procures Products from Seller;
- (d) "Product(s)" means any product ordered by Buyer from Seller, manufactured in accordance with Seller drawings and manufacturing processes and procedures, including, without limitation, any production or spare component, and/or any technical publications;
- (e) "Proprietary Information" means materials, data or intellectual property in which Seller has a proprietary interest, including, without limitation, (i) inventions, patents, trademarks, service marks, logos, and trade names (together with all goodwill associated therewith); (ii) copyright and copyrightable works (iii) trade secrets and know-how (including, without limitation, equipment and techniques used in the design, manufacture, servicing, testing, or delivery of Product(s)); and (iv) all other technical data and confidential business information of Seller (including without limitation, designs, drawings, specifications, customer and supplier lists, and financial or sales information).
- (f) "Confidential Information" means information, whether of a technical, business or other nature, disclosed by or on behalf of Seller to Buyer which is (i) not generally known to the public; (ii) identified by Seller as proprietary or confidential or (iii) that, by the nature of the circumstances surrounding the disclosure ought to be treated as proprietary or confidential.

ACCEPTANCE OF TERMS:

- (a) These Terms constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede all oral or written agreements and understandings, and, to the extent permissible by law, supersede all statutory provisions regarding scope and duration of Seller's warranties and the availability of remedies with regard to such subject matter. No additions to or modifications of Seller's Terms shall be binding upon Seller unless agreed to by Seller in a signed document executed by an authorized representative of Seller.
- (b) If an Order or other communication from Buyer includes any term or condition contrary to, or in addition to, the Terms stated herein, Buyer's acceptance of the Products which are the subject hereof, after receipt of these Terms from Seller, shall constitute Buyer's complete and unconditional acceptance of the Terms hereof notwithstanding anything to the contrary in any such earlier Order or communication, unless Buyer clearly instructs Seller in writing, prior to acceptance, to cancel the Order.
- (c) Buyer's communication of contrary or additional terms, however phrased, shall be construed as an offer to supplement and/or amend, and not as a rejection of, Seller's Terms. Such offer to supplement and amend shall be deemed rejected unless accepted by Seller in the manner set forth above in the second sentence of paragraph (a).

ORDERS: Any new, revised, or follow-on orders for Products shall be deemed to be an Order and subject to these Terms. Orders may only designate the Products being ordered, quoted prices, Order quantities, requested delivery dates, and shipping addresses. Seller's acknowledgment of receipt of Order shall not
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constitute acceptance. Seller's acceptance of an Order is expressly made conditional on acceptance by Buyer to Seller's Terms.

SHIPMENT AND DELIVERY: Product shipment terms are "FCA Seller's plant" (INCOTERMS 2010) unless otherwise agreed in writing by Seller. Title shall pass to Buyer upon Seller's delivery of the Products to the carrier at Seller's plant. Orders shall reflect Seller's standard lead times unless otherwise specifically agreed in writing and signed by the parties. Shipping and delivery dates are approximate and not guaranteed, although Seller shall use reasonable commercial efforts to meet delivery dates designated by Buyer. Product(s) shall be packaged in accordance with Seller's commercial practice. Seller reserves the right to charge Buyer for any additional costs associated with special routing, packing, labeling, handling or insurance requested by Buyer and agreed to by Seller. Partial shipments of complete Orders may be made at Seller's discretion. Delay in delivery of any installment shipments shall not relieve Buyer of its obligation to pay for any installment shipments received; or its obligation to accept remaining deliveries. Orders which have been accepted in writing by Seller, which (a) call for deferred deliveries scheduled over a stated time interval; or (b) are subject to subsequent delivery instructions, may not designate delivery dates beyond the date originally specified in Seller's quotation of prices (or beyond a reasonable time if no date has been so specified) except with Seller's written consent and upon terms which will indemnify Seller against all loss. Shipments may not be rescheduled or cancelled by Buyer within one hundred and twenty (120) days of Seller's scheduled shipping date, except with Seller's written consent and upon terms which will indemnify Seller against all loss. Buyer will not prevent such shipments through action or inaction.

QUOTATION VALIDITY: Unless otherwise noted on the face of a quotation, a quotation for production or spare Products provided by Seller is valid for ninety (90) days from the date of the quotation. Availability of Products is subject to prior sales.

FORCE MAJEURE: Subject to the provisions cited herein, Seller shall not be held in default by reason of any failure in the provision of Products in accordance with these Terms which arises out of or relates to causes or events beyond the reasonable control of Seller ("Force Majeure Event"), including, but not limited to, acts of God, acts of government, terrorism, fires, floods, epidemics, earthquakes, quarantine, restrictions, strikes, lock-outs, freight embargoes or failure of any supplier of Seller as a result of a Force Majeure Event. Seller shall provide Buyer timely written notice when Seller becomes aware of any circumstance or event which causes or may reasonably be anticipated to cause delay in delivery to Buyer. Such notice shall contain a detailed description of the nature of the delay. Within ten (10) days after such notice, Seller shall deliver a detailed written description of any recovery or work-around plan, alternative sources of supply and any other means that Seller shall, at its own expense, use to prevent further delay. If the delivery of Products should be delayed by reason of a Force Majeure Event for more than one hundred twenty (120) days beyond the original scheduled delivery date, Buyer may, upon written notice to Seller, rescind the Order with respect to any undelivered Products.

PRICES: Prices quoted are firm, fixed and do not include freight or transportation charges or insurance, duties, export charges, tariffs, governmental charges, or applicable taxes, including, without limitation, excise, sales or use taxes. Any taxes (other than taxes with respect to Seller's income) payable on transactions hereunder shall be the responsibility of Buyer. Seller reserves the right to invoice Buyer for any such taxes or other special charges that are or may become payable by Seller.

PAYMENTS: For those Buyers with approved credit with Seller, unless otherwise agreed upon, payment terms are net thirty (30) calendar days from date of invoice and payment shall be made in United States currency. For those Buyers with whom credit is not approved, payment terms are payment of twenty-

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five percent (25%) in advance and seventy-five percent (75%) net thirty (30) calendar days from date of invoice and payment shall be made in United States currency. If payment is made by Visa/MasterCard, Buyer agrees that any credit card information supplied is true, correct and complete, that charges incurred will be honored by Buyer's credit card company, and that Buyer will pay charges incurred at the rates in effect at the time incurred, including all applicable taxes. Seller at all times reserves the right to evaluate Buyer's credit standing and, if Buyer fails to qualify for credit under Seller's then-current criteria, Seller may modify or withdraw credit terms without notice and require guarantees, security or payment in advance for further deliveries of Products. In the event that Buyer is delinquent in its payment obligation to Seller, Seller may upon written notice to Buyer, withhold future shipments until all delinquent amounts and applicable interest, if any, are paid. If such delinquent amounts remain unpaid thirty (30) calendar days after such written notice, Seller may then: (a) declare Buyer in default and terminate the Order; (b) deliver future shipments on a cash with Order or cash in advance basis; (c) charge interest on delinquent amounts at a rate of one and one half percent (1-1/2%) per month or the maximum rate permitted by law, if lower, for each month or part thereof; (d) charge storage or inventory carrying fees on withheld Products; and (e) recover all costs of collection including, without limitation, reasonable attorneys' fees. The foregoing remedies are in addition to all other remedies available at law or in equity and any amounts due shall be payable without deduction, set-off, counterclaim, back charges, or any other charges or claims by Buyer of any nature, and Buyer's obligations to Seller shall remain unimpaired regardless of disputes which may arise between Buyer and third parties. This "Payments" clause shall survive the acceptance and complete performance of any Order.

INSPECTION AND ACCEPTANCE OF PRODUCT: Buyer shall upon delivery of any Products, inspect and either accept or reject such Products within a reasonable period not to exceed thirty (30) calendar days from the date of delivery ("Acceptance Period"). Buyer shall promptly notify Seller and provide a specific written explanation of the basis for any Product rejection. All claims for shortages must be made in writing within fifteen (15) calendar days after receipt of Products by Buyer or Buyer's agent and specify with particularity the exact shortage. Immediate written notice must be given to the carrier's agent at destination in the event of damage or loss in transit.

Buyer shall be deemed to have accepted any Product delivered hereunder and to have waived any right to reject in the event that Seller does not receive notice of rejection within the Acceptance Period. Seller shall, at its option, be afforded a reasonable opportunity to inspect, repair or replace, as applicable, any Products Buyer alleges to be non-conforming. **NO GOODS ARE TO BE RETURNED TO SELLER WITHOUT WRITTEN INSTRUCTIONS FROM SELLER AND WHEN SO RETURNED THE ORIGINAL BILL OF LADING MUST BE ATTACHED.**

PROPRIETARY INFORMATION: Seller grants to Buyer a non-exclusive, nontransferable (except as provided within this clause), limited license to use Seller's Proprietary Information solely as part of and in conjunction with the use of Products provided hereunder. All title, ownership rights, and intellectual property rights in and to Proprietary Information shall remain with Seller and Buyer shall not: (i) modify, translate, reverse engineer, decompile, disassemble, or otherwise copy such Proprietary Information or create derivative works based upon such Intellectual Property; (ii) distribute, rent, lease, sell, transfer, sublicense, assign or otherwise transfer or allow others to use rights in or to such Proprietary Information; or (iii) remove, obscure or alter any notices or labels identifying or indicating Seller's ownership in and to such Proprietary Information.

SOURCE INSPECTION: Apart from qualified government inspectors, no inspectors or other representatives of Buyer will be allowed in Seller's plant without specific approval in writing signed by a duly authorized representative of Seller.

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CHANGES: Buyer may request reasonable changes in specifications, shipment packaging, or delivery of any Product or part thereof covered by any Order by providing reasonable prior written notice thereof to Seller, and upon Seller's acceptance of such change, Seller shall be entitled to an equitable adjustment in the price and delivery schedule of such Product or part by providing revised terms to Buyer within thirty (30) days of receipt of Buyer's request for change. Buyer has the obligation to promptly negotiate Seller's revised costs in good faith and with reasonable diligence, but in no event later than forty-five days after Seller's submission of its revised costs. Seller reserves the right to make changes in the design of its Products at any time, provided that the Product has equivalent form, fit, and function as defined by Seller's specifications without incurring any obligation to make equivalent changes in Products previously manufactured or shipped.

DISPUTE RESOLUTION: Upon written notice by either party to the other, any unresolved dispute will be referred to Buyer and Seller senior management for resolution. If the dispute is not resolved within 30 days of the date of the written notice, the dispute, upon written notice by either party to the other, will be referred to Buyer and Seller executive management for resolution. If the dispute is not resolved within 30 days of the date of the written notice, and absent written agreement of the parties otherwise, the dispute may be resolved as provided in the Disputes section below.

DISPUTES: Any dispute arising out of or related to these Terms, any document subject to these Terms (including any Order) or any Products provided hereunder shall be decided by a court of competent jurisdiction in accordance with the laws of the state indicated above. Pending final resolution of any such dispute, the parties agree to proceed with performance of any Order in accordance herewith. In any dispute in a court of law to enforce or interpret these Terms, the prevailing party shall be entitled to reimbursement of its costs, including reasonable attorney's fees, from the other party.

GOVERNING LAW: These Terms and any document subject to these Terms (including any Order) shall be interpreted in accordance with the laws of the State of California, exclusive of any choice of law provisions. The parties agree that any suit brought in accordance with the "Disputes" clause hereof shall be brought in state or federal court sitting in the state of California and the parties irrevocably consent to the exclusive jurisdiction and venue of and agree to be bound by any judgment and orders rendered by such courts.

CANCELLATIONS: Buyer may cancel Order(s) with a prior ninety (90) day written notification to Seller, only if Seller agrees to cancellation in writing and only after payment of reasonable charges based upon costs and expenses already incurred and commitment made by Seller.

SETOFF: Buyer is expressly prohibited from and shall not deduct or set-off invoiced amounts or any portion thereof against sums that are due or may be due from Buyer to Seller.

SPECIAL TOOLING AND DATA: Unless otherwise agreed in writing, all material, software, data, processes, equipment, facilities and special tooling including, without limitation, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids and replacements thereof, used in the manufacture, servicing, testing, or delivery of Products shall be and remain the property of Seller.

EXPORT COMPLIANCE: Unless otherwise agreed in writing, Buyer shall be responsible for compliance with the U.S. export control laws and regulations applicable to the Product including, without limitation, those of the U.S. Government Office of Foreign Assets Control (OFAC), Export Administration Regulations (EAR) and the International Traffic In Arms Regulations (ITAR). Seller shall not be held liable to Buyer for any failure to deliver Products as a result of (i) the U.S. Government's

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refusal to grant any export or re-export authorization; (ii) cancellation of any export or re-export authorization; or (iii) any change or subsequent interpretation of a law or regulation after the date of an Order that adversely impacts or affects Seller's costs or ability to perform its obligations.

OFAC/EAR/ITAR COMPLIANCE CERTIFICATION: For all Products and associated technical data to be received by Buyer from Seller, Buyer certifies that it will not export, re-export, or transport any such Product or data, or otherwise perform any act contrary to OFAC, EAR, or ITAR prohibitions and restrictions. This includes, but is not limited to, observing all OFAC country and list-based sanctions and complying with all EAR Part 736, 744, and 746 restrictions. Buyer agrees that the export control requirements listed above shall survive the completion, early termination, cancellation, or expiration of the applicable Order.

Seller certifies that it is ITAR compliant and that it is subject to CFR and DFAR regulations.

WARRANTY: Seller warrants that each Product provided to Buyer pursuant to any Order shall be free from defects due to faulty workmanship or material ("Seller's Warranty"), for a period of one (1) year from the date of shipment ("Warranty Period").

WARRANTY LIMITATIONS: THE ABOVE "WARRANTY" IS EXCLUSIVE AND IN SUBSTITUTION FOR, AND SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES AND LIABILITIES OF SELLER AND ALL CLAIMS AND REMEDIES OF BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN ANY PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY (1) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE, (2) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, AND (3) RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE AND (4) ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER. IN THE EVENT THAT ANY PROVISION HEREOF SHOULD FOR ANY REASON BE HELD INEFFECTIVE, THE REMAINDER OF THIS ARTICLE SHALL REMAIN IN FULL FORCE AND EFFECT.

No promise or affirmation of fact made by any employee, agent, or representative of Seller, nor any sample provided, shall constitute any additional warranty or give rise to any liability or obligation. Seller neither expressly nor impliedly warrants, nor makes any representation whatsoever, as to service life of its Products, since conditions of usage and experienced service life are neither within the control of nor knowledge of Seller. In no event shall Seller be responsible for claims resulting in whole or in part, directly or indirectly, from the use, abuse or mishandling of Products or for the costs of labor and/or materials expended on any such Products, or for Products that have been the subject of a replication (i.e., reverse engineering) program, either formal or informal, sponsored or supported by Buyer or any other entity.

Buyer's sole remedy and Seller's sole obligation with respect to any Product determined by Seller, in its sole discretion, to be in breach of Seller's Warranty is, at Seller's sole discretion, the repair or replacement of such Product. Replacement parts may be new or reconditioned.

WARRANTY MANAGEMENT: Buyer must notify Seller in writing concerning any Product allegedly defective or otherwise not in conformity with Seller's Warranty as soon as practicable, but in no event later than one hundred twenty (120) days after discovery of such defect or nonconformity subject to the Warranty Period set forth above. Buyer's written notice must set forth with particularity the nature and extent of the defect or nonconformity.

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Failure to furnish a written claim within the applicable Warranty Period shall terminate all warranty liability of Seller. Seller must be given the opportunity upon written demand to inspect Products claimed to be defective or nonconforming. Buyer shall return Products that do not conform to Seller upon receipt of Seller's authorization to do so and at Buyer's risk and expense. Buyer must demonstrate to the reasonable satisfaction of Seller that any alleged defective or nonconformity of Products was solely caused by a breach by Seller of Seller's Warranty. If Seller's Products breach Seller's Warranty, Seller shall reimburse Buyer for the costs to return defective or nonconforming Product to Seller. Buyer shall not, under any circumstances, exercise set-off against outstanding or subsequent invoices of Seller without Seller's written consent for any warranty claim.

Unless otherwise agreed by Seller in writing, Seller's warranty runs only to the Buyer designated in any Order and is non-transferable and non-assignable either directly, indirectly, or by operation of law. Any purported or attempted transfer or assignment of Seller's warranty hereunder shall be deemed null and void, and Buyer agrees to indemnify defend and hold Seller harmless from and against any and all claims and actions of third parties with respect to Seller's warranty.

LIMITATION OF LIABILITY:

The total aggregate liability of the Seller arising out of or in connection with the performance of this Order, whether for negligence or otherwise, shall in no event exceed the total contract price of the individual Product for the Order giving rise to the claim (or claims) of liability, whether resulting from delays in delivery or performance, breach of warranty, claims of negligent manufacturing, patent or copyright infringement, or otherwise, and in all events the maximum total liability of Seller hereunder shall not exceed the total amount received by Seller under this Order.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR REMOTE DAMAGES, INCLUDING LOSS OF PROFITS OR LOSS OF USE, OR FOR PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES, HOWEVER STYLED, WHETHER ARISING UNDER THIS ORDER OR OTHERWISE.

The obligations and liabilities under Seller's Warranty under this Order are expressly limited to the replacement or the repair by Seller of Products, and shall not include any removal or reinstallation costs, or the costs of any recall program incident to such correction or replacement.

THESE EXCLUSIONS OF TYPES OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THIS AGREEMENT.

These clauses set out the entire liability of Seller (including any liability for the acts or omissions of its sub-contractors) in respect of any breach of this Order and any representation, statement or tortious act or omission including negligence arising under or in connection with the Order. ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THIS ORDER.

SELLER'S INDEMNITY - INTELLECTUAL PROPERTY INFRINGEMENT:

Seller agrees to indemnify Buyer from and against any loss or damage incurred by Buyer as a result of a final judgment of a court of competent jurisdiction that Seller's Products infringe a United States patent or copyright held by a third party.

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Seller's duty to indemnify shall not apply to any (i) Products provided pursuant to Buyer's designs, drawings or manufacturing specifications, (ii) Products used other than for their ordinary purpose, or (iii) claims of infringement resulting from Buyer combining any Product furnished hereunder with any article not furnished by Seller. Further, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions set forth in Seller's obligations to Buyer for any suit or proceeding against Seller based upon a claim of infringement resulting from (i), (ii) or (iii) of the preceding sentence. Buyer shall deliver written notice to Seller: (i) within ten (10) days after Buyer first receives notice of any suit or other formal action against Buyer and (ii) within twenty (20) days after Buyer first receives any other allegation or written claim of infringement. Buyer shall give Seller full and exclusive control to conduct the defense or settlement of any suit. At Seller's request and expense, Buyer shall provide reasonable assistance including promptly furnishing to Seller all information and records within Buyer's possession or control which Seller considers relevant or material to any alleged infringement. Because Seller has exclusive control of resolving infringement claims hereunder, in no event shall Seller be liable for Buyer's attorney fees or costs.

In the event any Product furnished hereunder is determined to have infringed any copyright or patent with respect to which Seller has an obligation to indemnify, Seller may, at its option and expense: (i) procure for Buyer the right to continue using the Product, (ii) replace or modify the Product so that it becomes non-infringing, or (iii) grant Buyer a credit for such product. Each party's liability in the aggregate for damages under this paragraph is limited to the annual value of any Products sold to Buyer hereunder. Except as required by a final judgment entered against Buyer by a court of competent jurisdiction from which no appeals can be or have been filed, Buyer shall obtain Seller's written approval prior to paying, committing to pay, assuming any obligation, or making any concession relative to any infringement covered by these indemnities.

THE OBLIGATIONS OF SELLER AND REMEDIES OF BUYER HEREUNDER ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BUYER HEREBY WAIVES, RELEASES, AND RENOUNCES, ALL OTHER INDEMNITIES, OBLIGATIONS, AND LIABILITIES OF SELLER AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF BUYER AGAINST SELLER.

CONFIDENTIALITY: Buyer shall hold all Confidential Information of Seller, whether disclosed by Seller to Buyer in connection with Seller's provision of Product(s) hereunder or otherwise, in confidence and shall not reproduce, use or disclose such Confidential Information in whole or in part to any third party without the prior written consent of the Seller and shall take reasonable precautions to safeguard the secrecy thereof.

Upon request by Seller, Buyer agrees to sign a Nondisclosure Agreement, and other Nondisclosure Agreements as may be required by Seller's suppliers and customers.

SEVERABILITY: If any provision of these Terms is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, for any reason, the remainder shall remain valid in full force and effect.

ASSIGNMENT: Buyer may not assign any rights nor delegate any obligations under these Terms or any portion hereof without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any attempt to assign or delegate in violation of this clause shall be void. Seller can freely assign at any time to acquiring companies or successor entities upon written notice.

WAIVER: Failure by either party to assert any of its rights under these Terms shall not be deemed a waiver of such rights, nor shall any waiver be implied from the acceptance of any payment. No waiver of any right hereunder shall affect any other right a party may possess.

ELECTRONIC ACCESS: Buyer acknowledges that any attempts to electronically access any data or other materials of Seller or make any attempts to circumvent any security measures of Seller designed to prevent unauthorized electronic access to such data or materials, may be in violation of the United States federal Computer Fraud and Abuse Act, and other applicable United States federal and state statutes, and may subject the violator to criminal and civil penalties.

ENTIRE AGREEMENT: These Terms constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous agreements, communications, or representations, either verbal or written between the parties hereto. Oral understandings are expressly excluded. These Terms may not be changed, altered, supplemented or added to at any time except by written amendment and duly executed by the Parties.