



TERMS AND CONDITIONS

1. **Applicability of Terms and Conditions**

In these Terms and Conditions of Sale, "Seller" is Alexin, LLC, an Indiana limited liability company, and "goods" are all merchandise, material and other items offered by Seller including repair or services identified in the Seller's proposal, and "Purchaser" is a purchaser of goods from the Seller. These Terms and Conditions shall apply to all goods provided by Seller to Purchaser and accordingly, such Terms and Conditions supersede, and neither party places any reliance upon any and all prior representations, agreements, statements, understandings and negotiation whether oral or in writing relating in any way whatsoever to a sale of goods by Seller to Purchaser. Orders placed by the Buyer for goods shall not be binding on Seller and no contract shall be concluded until the order is accepted by an authorized representative of the Seller. If an order is accepted, except as otherwise agreed to in writing by Seller, the terms and provisions contained in Seller's proposal and order acknowledgement together with these Terms and Conditions constitute the entire contract for the furnishing of goods (collectively, the "Contract"). These Terms and Conditions may not be modified unless agreed to in writing by both Parties. Purchaser is hereby notified of Seller's objection to and rejection of any terms in Purchaser's proposal, bid, purchase order, acknowledgment or other forms which are in addition to, differ from, conflict with or are not included in these Terms and Conditions. These Terms and Conditions shall be deemed incorporated by reference in, and a part of, all transactions and documents relating to purchases by Purchaser from Seller, including, without limitation, quotations, purchase orders, order confirmations and invoices, whether or not any specific reference to these Terms and Conditions is made in any such transactions or documents.

2. **Quality**

The Purchaser shall not be entitled to reject the material or any part thereof for minor differences in the material from the grade, type or description specified by Seller; a fair allowance for any such differences will be made and settled by arbitration if necessary.

3. **Quality and Quantity Determination**

The Seller shall provide a certificate of quality and quantity which certificate shall be conclusive as between the parties of the quality, quantity and specification of the product sold.

4. **Shipping**

All goods are sold f.o.b. shipping point with transportation at the expense of Purchaser and Seller reserves the right to select the means of transportation and routing. Title to and risk of loss and damage shall pass to Purchaser upon delivery of the goods to the transportation company at Seller's shipping point.

5. **Limitation of Liability**

The maximum liability of Seller for damages and penalties arising out of, in connection with or resulting from the transactions contemplated hereunder shall be the total invoice value of the goods. Seller disclaims any obligation or liability for the loss of use of the goods sold, loss of time, cost or expense, inconvenience, commercial loss or any other indirect, consequential, special or incidental damages. Seller shall have no other liability on any claim of any kind whether for negligence, breach of contract, breach of warranty, strict liability, tort or otherwise for any damage or injury to person or property or loss arising out of, in connection with, or resulting from the transactions contemplated hereunder, or the performance thereof.

6. **Law and Arbitration**

- a) The construction, validity and performance of the Contract shall be governed in accordance with the laws of the State of Indiana.

- b) Except as provided below, any dispute or other controversy with respect these Terms or Conditions or the validity thereof or the transactions contemplated hereunder shall be submitted to arbitration by one (1) arbitrator in Indianapolis, Indiana under the rules of the American Arbitration Association effective at that time, and any decision rendered thereunder shall conclusively bind the parties. Judgment upon the award may be entered in any court having jurisdiction thereof. However, any action or proceeding by Seller to collect sums owed to Seller by Purchaser may, at Seller's discretion, be commenced in any court having jurisdiction rather than submitting such matter to arbitration, and Purchaser hereby submits to personal jurisdiction over Purchaser in any court, state or federal, situated in Marion County, Indiana, and agrees that service of process on Purchaser by mail shall be sufficient service of process in any court proceeding so initiated by Seller.

7. Force Majeure

- a) Should the Seller be prevented from or hindered in delivering the goods or any part thereof by reason of war, riot, explosion, fire, flood, strike, lockout, interruption or delay in transportation ,acts or regulations of government, acts of God, shortage of material or labor, or any cause beyond the Seller's control, time of delivery shall be extended until the operation or the cause preventing or hindering delivery has ceased; saved that the Seller shall deliver and the Purchaser shall take and pay for such part of the goods as the Seller shall be able to deliver in accordance with the agreed delivery date.
- b) If delivery of the goods or any part of them has not been made within two (2) calendar months of the agreed delivery date, the Purchaser shall be entitled by giving written notice to the Seller to cancel the order in respect of such goods that have not yet been received.
- c) In the event of the force majeure the Seller shall be entitled to deliver the goods in one or more deliveries, unless otherwise expressly agreed.

8. Installments

In the event that the material is made available in a number of installments, each such installment shall be deemed to be a severable part of the whole order, to which severable part(s) the provisions of the Contract shall apply.

9. Disclaimer of Warranties

If Seller makes any express warranties with respect to goods sold to Purchaser, the fact that a warranty is offered and the applicable warranty period will be specified on the face of Seller's proposal, quotation or invoice, and the scope of such warranty will cover defects in materials or workmanship as to which written notice is given to Seller during the warranty period. If no warranty is specified, there is no specific warranty offered. In the event of any warranty offered, the Seller will, at the Seller's sole option, either repair or replace those goods or refund the purchase price paid for those goods, provided the Purchaser has properly notified the Seller in writing of such defects or failure during the warranty period. Any warranty offered by Seller is non-transferable and limited to the original Purchaser, and is expressly null and void if the goods have been used contrary to the Seller's specific instructions or have been subject to accident, alteration, unauthorized modification, abuse or misuse. SELLER NEITHER ASSUMES, NOR AUTHORIZES ANY PERSON TO ASSUME FOR SELLER, ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE SALE OF GOODS OF SELLER, THE WARRANTY OF SELLER SHALL NOT APPLY TO ANY GOODS WHICH HAVE BEEN SUBJECT TO ACCIDENT, NEGLIGENCE, ALTERATION, ABUSE, OR MISUSE. THE REMEDIES SET FORTH IN THIS WARRANTY SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO PURCHASER, AND SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE AND ANY LIABILITY OF SELLER SHALL NOT EXCEED THE PRICE PAID FOR THE GOODS CLAIMED TO BE DEFECTIVE. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND THIS WARRANTY SPECIFICALLY EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

10. Breach

In the event of the failure of Purchaser to make any payments to Seller when due, or in the event of any breach of the Contract by Purchaser, Seller shall be entitled, at its sole option, to: a) suspend shipment of any or all goods to Purchaser (including any unshipped installments); b) cancel the Contract or any orders then outstanding for the sale of goods to Purchaser; c) to the extent permitted by law, recover from Purchaser all expenses incurred by Seller in the

collection of said payment or as a result of said breach, including reasonable attorney's fees; and d) exercise all of its rights and remedies available at law or equity, including those under the Uniform Commercial Code.

11. Security Interest

Purchaser hereby expressly grants to Seller a security interest in the goods which are sold by Seller to Purchaser pursuant to the Contract, including any additions, accessions, increases, substitutions and replacements of the goods and all proceeds thereof. Without Seller's prior written consent, Purchaser will not sell, lease, dispose of or permit the goods to be encumbered in any way prior to final payment of the purchase price balance. Purchaser agrees to cooperate with seller in complying with all laws and regulations pertaining to the perfection of such a security interest. Seller is hereby authorized to file a financing statement, without the signature of Purchaser or, in the alternative, to execute a financing statement as the duly authorized agent of Purchaser, to perfect the security interest of Seller in such goods. Purchaser acknowledges that the Contract or copies thereof may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as Seller may request in order to protect its security interest in the goods until the goods have been fully paid for.

12. Miscellaneous

- a) Payment shall be due as provided by Seller in its invoice or other writing. In the event that payment for the material or goods is delayed beyond the time agreed, interest is payable at the rate 3% over prime (as published in the *Wall Street Journal*) from the date payment fell due to the date of payment. If no date for payment has been agreed, or if payment is dependent upon presentation of documents, interest runs from five (5) days after invoice date. Purchaser shall pay or reimburse Seller for all taxes, excises or other charges which Seller may be required to pay to any government or governmental authority which are hereunder levied upon the production, sale, transportation or use of any goods purchased from Seller.
- b) Seller's waiver of any breach by Purchaser of any of the provisions of the Contract shall not constitute a waiver of any other breach of the same or any other provision. Seller's rights and remedies hereunder shall be in addition to and not in substitution of any other rights and remedies available to Seller under applicable law.
- c) The Contract shall bind the respective successors and assigns of the parties, but none of Purchaser's rights or obligations hereunder shall be assigned without Seller's prior written consent.
- d) These Terms and Conditions combined with the Seller's proposal and order acknowledgement comprise the entire agreement relating to the sale of the goods. The invalidity of any part of the agreement shall not affect the remaining provisions.