



**Kenet, Incorporated**  
**Standard Terms and Conditions of Sale**

**1. Acceptance.** These Standard Terms and Conditions of Sale (*Terms*) constitute the entire agreement and understanding of Kenet, Inc. (*Kenet*) and you (*Buyer*) with respect to the purchase and sale of Kenet's Products. Buyer's acceptance of delivery of or payment for any Products provided hereunder shall constitute Buyer's acceptance of all Terms. The term *Product* or *Products* as used herein means the Kenet products ordered by Buyer as set forth on Kenet's sales order acknowledgment, attached hereto. Buyer agrees and represents that it is buying Products for its own use only, and not for resale, except as may be incorporated in Buyer's own products. Kenet reserves the right to refuse to sell Products to any buyer if it reasonably believes that the Product is being ordered for resale or transfer to an unauthorized third party.

**2. Prices.** Applicable prices are those specified in Kenet's quotation or, if the quotation has expired, those specified in Kenet's sales order acknowledgment. In the event of fluctuations in the market prices of fuels, raw materials, metals (including precious metals), equipment used in the production of the Products, or other production costs, Kenet reserves the right to adjust the price of Products not yet shipped to reflect such fluctuations. Prices are subject to revision based on changes in economic and financial conditions after the date of quotation or confirmation over which Kenet has no control. Prices are also subject to revision when interruptions, delays, engineering changes or changes in the quality of Products are caused or requested by Buyer.

**3. Taxes.** Prices do not include any tax or other governmental charge or assessment on the sale, shipment, production or use of any Products sold to Buyer hereunder. Such taxes and charges, when applicable, may appear as separate additional charges on Kenet's invoice. Buyer shall be solely responsible for, and shall pay to Kenet upon demand, any such tax, charge or assessment, unless Buyer has furnished to Kenet an appropriate valid certificate of exemption issued by or acceptable to the tax authority in question. If taxes are in the form of withholding, Buyer shall pay an amount to Kenet equal to the invoice price grossed up for such withholding.

**4. Title and Delivery.** Shipments of goods shall be delivered F.O.B. from the shipping point. Title and all risk of loss or damage to the Products shall pass to Buyer upon Kenet's tender of delivery of the goods to a carrier for shipment to Buyer and any subsequent damage or loss shall not relieve Buyer from any obligation under these Terms. Any claims for damage, loss or delays in transit will be made by Buyer against the carrier (with notice thereof to Kenet), and Kenet will have no responsibility or obligation with respect to such damage, loss or delay. Buyer shall be responsible for costs of transportation and insurance and shall be responsible for all import duties, taxes and other expenses incurred or licenses or clearances required for export sales at port of entry and destination. If requested by Buyer and approved by Kenet, transportation charges and insurance will be prepaid and will be added to invoice as a separate item. Kenet may deliver goods in installments. All delivery dates are estimates. Kenet shall make reasonable efforts to effect shipment on or before the scheduled shipping date(s) reflected on Kenet's acknowledgment or invoice, but shipping deadlines are not guaranteed. If no shipping date is specified, shipment will be made on date(s) selected by Kenet. Kenet shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer if Kenet fails to meet the estimated delivery dates. Delivery may be made in advance of any scheduled delivery date upon reasonable prior notice to Buyer. All items will be packed for shipment and shipped in accordance with Kenet's standard practices. Kenet reserves the right to allocate production and deliveries among its various customers at Kenet's sole discretion under any circumstances.

**5. Inspection by Buyer.** Buyer shall carefully inspect all deliveries of Products as they are received by Buyer and report to Kenet promptly (but in any event within thirty (30) calendar days after receipt of shipment) any alleged error, shortage, defect or nonconformity of such Products. Any failure by Buyer to so inspect and report shall constitute a waiver by Buyer of any claim or right of Buyer against Kenet arising with respect to any such error, shortage, defect or nonconformity which was reasonably discoverable by such an inspection.

**6. Terms and Method of Payment:** Unless otherwise stated on Kenet's acknowledgment or invoice, Buyer shall pay all amounts due for Products purchased hereunder in U.S. dollars, and all sales, if on credit, within

thirty (30) days from the date of Kenet's invoice, provided that if Kenet reasonably deems Buyer's financial status unsatisfactory or Buyer is in default of any obligation of Buyer to Kenet, Kenet may (without prejudice to any other rights or remedies it may have) require payment in full in cash of all amounts payable to Kenet by Buyer under Kenet's invoice or otherwise prior to shipment of any Products thereunder. Overdue amounts shall bear interest in an amount equal to one and one-half percent (1.5%) of the unpaid balance per month (or portion thereof), or if less, at the highest interest rate permitted by applicable law, calculated monthly from the date payment was due until the date payment is made. Buyer shall not withhold or set off from any amounts due to Kenet, any amounts claimed to be owed by Kenet to Buyer for any reason whatsoever. Each shipment shall be separately invoiced and paid for when due without regard to other shipments.

**7. Remedies.** If Buyer fails to pay when due any amount Buyer owes to Kenet for such Products, Kenet shall have, in addition to any other rights of Kenet, the right (without liability of Kenet) to repossess such Products or to require Buyer to effect (at Buyer's expense) return delivery of such Products to Kenet. In addition, until Buyer has paid to Kenet the entire amount due to Kenet for such Products, Kenet shall retain a security interest in such Products in the amount of the full purchase price plus all other amounts due hereunder and all costs of collection incurred by Kenet (including but not limited to court costs and reasonable attorneys' fees), and Kenet shall retain all rights and remedies of a secured party under the Uniform Commercial Code as in effect at the time of delivery of such Products. A copy of Kenet's invoice may be filed with the appropriate authorities at any time as a financing statement or chattel mortgage in order to perfect Kenet's security interest. Upon the request of Kenet, Buyer will execute any financing statements and other documents or instruments necessary or appropriate in order for Kenet to perfect its security interest.

**8. Contingencies.** Kenet is not liable, either wholly or in part, for non-performance or a delay in performance due to force majeure or contingencies or causes beyond the reasonable control of Kenet (each, a **Force Majeure Event**) including, but not limited to, acts of God, wars, acts of terrorism, riots, civil disturbances, strikes, labor disputes, fires, storms, floods, earthquakes, natural disasters, inability to obtain or use raw or component materials or parts, fuel, labor, equipment, facilities, or transportation, or technical or yield failure where Kenet has exercised ordinary care in the prevention thereof, and acts of any government or agency thereof. Production and deliveries may be allocated in a reasonable manner in the event of a shortage of goods. Buyer's order will be deemed suspended for so long as any such Force Majeure Event prevents or delays Kenet's performance. In the event of any such suspension, Kenet shall have the right, at its option, upon notice to Buyer, (a) to terminate its obligation to sell any or all of the Products ordered hereunder, or (b) to resume performance as soon as practicable after the suspension, and reschedule delivery of the Products ordered hereunder to one or more deferred dates to be mutually agreed upon by Buyer and Kenet.

**9. Warranties and Related Remedies.** It is the sole and exclusive responsibility of Buyer to determine the suitability of any and all Products of Kenet for Buyer's intended purposes and uses. Kenet warrants that the Products sold hereunder conform to Kenet's applicable specifications (subject to Kenet's standard tolerances for variations) as in effect at the time of shipment by Kenet for a period of one (1) year from the date of shipment of the Products by Kenet (the **Warranty Period**). Liability of Kenet under or in connection with a breach of the limited warranty shall be limited, at the sole option of Kenet, to either refund of the purchase price of, or replacement or repair of, any Products (a) with respect to which Buyer notifies Kenet of Buyer's claim of any alleged defect or nonconformity during the Warranty Period, (b) which is returned to Kenet promptly upon request, and (c) which is determined by Kenet to be defective or nonconforming hereunder. This warranty is void if the defect in the Product has resulted from: (i) accident, abuse, problems with electrical power, misuse, neglect, unauthorized repair, or misapplication of the Product; (ii) use of the Product in an application or environment or on a platform or with software or devices for which the Product was not designed or contemplated, (iii) modifications, alterations, combinations or enhancements of the Product not created by Kenet, or (iv) failure of Buyer to install any corrections or enhancements to the Product made available by Kenet. Continued use or possession of the goods after expiration of the Warranty Period stated above shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of Buyer.

**10. EXCLUDED WARRANTIES.** THE LIMITED WARRANTY SET FORTH IN SECTION 9 IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY KENET WITH RESPECT TO PRODUCTS SOLD OR PROVIDED BY KENET. KENET GIVES AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN THAT EXPRESSLY SET FORTH HEREIN. NO REPRESENTATIVE OF KENET IS AUTHORIZED TO GIVE OR MAKE ANY OTHER REPRESENTATION OR WARRANTY OR

MODIFY THIS WARRANTY IN ANY WAY EXCEPT IN A WRITTEN AMENDMENT OF THESE TERMS SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF KENET WHICH MAKES SPECIFIC REFERENCE TO THESE TERMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, KENET EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT, ACCURACY, INTEGRATION, AS WELL AS ALL WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

KENET MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO SOFTWARE PRODUCTS, WHICH ARE SUPPLIED "AS-IS". FOR PRODUCTS NOT MANUFACTURED BY KENET, TO THE EXTENT PERMITTED BY KENET'S CONTRACT WITH ITS SUPPLIER, KENET SHALL ASSIGN TO BUYER ANY RIGHTS KENET MAY HAVE UNDER ANY WARRANTY OF THE SUPPLIER.

KENET MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO EVALUATION PRODUCTS OR SYSTEMS OR DEVELOPMENTAL PRODUCTS (*EVALUATION PRODUCTS*) WHICH ARE SUPPLIED "AS-IS". EVALUATION PRODUCTS ARE SUPPLIED WITHOUT TESTING TO NATIONAL OR INTERNATIONAL SAFETY REQUIREMENTS AND ARE ONLY FOR USE BY QUALIFIED PROFESSIONAL ELECTRONICS PERSONNEL. IT IS THE RESPONSIBILITY OF THE BUYER TO ENSURE THAT EVALUATION PRODUCTS ARE HANDLED, USED AND MANAGED IN SUCH A WAY AS TO ENSURE THE SAFETY OF ITS EMPLOYEES AND ANY THIRD PARTY THAT MAY COME IN CONTACT WITH THE GOODS. KENET WILL NOT ACCEPT ANY LIABILITY FOR ANY DAMAGE WHATSOEVER WITH RESPECT TO EVALUATION PRODUCTS.

KENET MAY PROVIDE TECHNICAL, APPLICATIONS, OR DESIGN ADVICE, QUALITY CHARACTERIZATION AND RELIABILITY DATA OR SERVICE IN CONNECTION WITH BUYER'S ORDER OR THE PRODUCTS. KENET'S PROVISION OF THESE ITEMS SHALL NOT EXPAND OR OTHERWISE AFFECT KENET'S WARRANTIES SET FORTH ABOVE AND NO OBLIGATION OR LIABILITY SHALL ARISE FROM KENET'S PROVISION OF SUCH ITEMS.

**11. MILITARY APPLICATIONS AND/OR ENVIRONMENTS.** BUYER UNDERSTANDS AND AGREES THAT THE KENET PRODUCTS CONSISTING OF PLASTIC ENCAPSULATED SEMICONDUCTOR DEVICES ARE INDUSTRIAL GRADE PRODUCTS THAT MAY MEET THE DATA SHEET SPECIFICATIONS FOR USE IN MILITARY APPLICATIONS AND/OR MILITARY ENVIRONMENTS BUT ARE NOT DESIGNED, AUTHORIZED OR WARRANTED FOR USE IN MILITARY APPLICATIONS AND/OR MILITARY ENVIRONMENTS THAT REQUIRE THE USE OF MILITARY GRADE PRODUCTS. KENET MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER, FOR THE USAGE OF SUCH KENET PRODUCTS IN ANY MILITARY APPLICATIONS OR ENVIRONMENTS REQUIRING THE USE OF MILITARY GRADE PRODUCTS, WHICH SHALL BE AT BUYER'S SOLE RISK, EVEN IF KENET HAS BEEN PREVIOUSLY NOTIFIED OF SUCH USAGE. BUYER AGREES TO FULLY INDEMNIFY KENET FOR ANY LOSSES, DAMAGES, FINES, PENALTIES, ASSESSMENTS, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) ARISING OUT OF ANY SUCH USAGE.

**12. OTHER APPLICATIONS.** BUYER ACKNOWLEDGES THAT KENET'S PRODUCTS ARE NOT DESIGNED, AUTHORIZED OR WARRANTED FOR USE IN LIFE SUPPORT, CRITICAL CARE OR SAFETY APPLICATIONS, EQUIPMENT, DEVICES OR SYSTEMS, NOR IN ANY OTHER APPLICATIONS WHERE PRODUCT FAILURE COULD RESULT IN PERSONAL INJURY, DEATH OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE. KENET MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER, FOR ANY SUCH USAGE, WHICH SHALL BE AT BUYER'S SOLE RISK, EVEN IF KENET HAS BEEN PREVIOUSLY NOTIFIED OF SUCH USAGE. BUYER AGREES TO FULLY INDEMNIFY KENET FOR ANY LOSSES, DAMAGES, FINES, PENALTIES, ASSESSMENTS, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) ARISING OUT OF ANY SUCH USAGE.

**13. Returns.** Authorization to return Products purchased from Kenet must be obtained from Kenet in writing prior to any such return. In Kenet's sole discretion, credit may be granted with respect to returned Products, less an appropriate restocking charge, depending on the reason for the return and the condition of the Product. Any returned Products must be shipped to Kenet, freight prepaid, at Buyer's risk.

**14. Custom Product.** The design and/or manufacture of any Products by Kenet for the unique needs of Buyer, or to Buyer's specifications or requirements shall be the subject of a separate written agreement between Kenet and Buyer.

**15. Changes to Specification; Discontinued Product.** Kenet reserves the right to change the specifications of any Product (including all statements and data appearing in Kenet's catalogs, data sheets and advertisements) within ninety (90) days notice. If specifications are changed, Kenet assumes no obligation to provide the change on Products previously purchased or to continue to supply discontinued Products or versions. Kenet may substitute Products manufactured to such modified specifications for those specified herein provided such products substantially conform to the products described in the sale contract. Kenet reserves the right to discontinue manufacturing and sale of Products at any time. However, Kenet shall use its reasonable commercial efforts to give Buyer ninety (90) days written notice of any such discontinuance and shall use reasonable commercial efforts to accept orders for a period of one hundred and eighty (180) days for such discontinued Product all in accordance with Kenet's Product discontinuation process and general information related thereto as published on Kenet's website.

**16. Property Used.** Unless otherwise agreed in writing, all masks, tooling, dies, equipment, drawings, tapes, fixtures and documentation, whether supplied by Kenet or Buyer, used by Kenet in furnishing Products hereunder shall be and remain the property of Kenet.

**17. LIMITATION ON KENET'S LIABILITY.** IN NO EVENT SHALL KENET HAVE ANY LIABILITY TO BUYER, ARISING OUT OF OR IN CONNECTION WITH THE SALE OR USE OF THE PRODUCTS SOLD HEREUNDER OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, NEGLIGENCE, BREACH OF WARRANTY OR OTHERWISE), IN AN AMOUNT IN EXCESS OF THE AMOUNT(S) ACTUALLY RECEIVED BY KENET FROM BUYER AS PURCHASE PRICE FOR THE PRODUCTS WHICH GIVE RISE TO KENET'S LIABILITY. KENET SHALL HAVE NO OTHER LIABILITY, OBLIGATION OR RESPONSIBILITY OF ANY KIND, IN ANY WAY OR TO ANY EXTENT FOR ANY LOSSES, EXPENSES, COSTS, DAMAGES OR LIABILITIES FOR ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE PRODUCTS (OR THE PERFORMANCE THEREOF), OR ARISING IN ANY WAY OR IN CONNECTION WITH THE PURCHASE BY OR USE OR SALE OF THE PRODUCTS BY BUYER, EVEN IF KENET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL KENET HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING IN ANY WAY IN CONNECTION WITH THE PRODUCTS OR THEIR SALE OR USE, INCLUDING BUT NOT LIMITED TO DAMAGE TO PROPERTY, INJURY TO PERSONS, LOSS OF USE OF THE PRODUCTS OR ANY ITEM WITH WHICH SUCH PRODUCTS ARE USED, LOST PROFITS, OR DELAYS OR INCONVENIENCE.

**18. Intellectual Property.** All intellectual property rights covering Products including without limitation any and all designs, masks, data, database, tapes, software, and/or documentation included in, with or comprising Products, and all ownership rights in and to such intellectual property rights, shall remain solely and exclusively with Kenet or its third party suppliers, whether or not it was developed specifically for the Buyer. NOTHING CONTAINED IN THESE TERMS, NOR THE SALE BY KENET OF THE PRODUCTS ORDERED HEREUNDER IS INTENDED TO GRANT TO, CONVEY OR CONFER UPON BUYER OR BUYER'S CUSTOMERS, OR UPON ANYONE CLAIMING UNDER BUYER, A LICENSE, EXPRESS OR IMPLIED, UNDER ANY PATENT RIGHT, COPYRIGHT, MASK WORK RIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT OF KENET COVERING OR RELATING TO THE PRODUCTS OR ANY COMBINATION, MACHINE OR PROCESS IN WHICH SAID PRODUCTS MIGHT BE OR ARE USED.

**19. Termination and Cancellation:** (a) Orders accepted by Kenet are firm and non-cancelable within thirty (30) days of acknowledged delivery. Kenet will not accept cancellations or reschedule of orders, other than for default of Kenet or upon payment of all Kenet's costs incurred for and reasonably allocated to the portion of the work already terminated and/or work in process, and together with cancellation charges set forth in (b) below. No cancellation for Kenet's default shall be effective unless Kenet shall have failed to correct such alleged default within forty five (45) days after receipt by Kenet from Buyer or written notice of default.

(b) Unless otherwise expressly agreed in writing by Kenet, Products scheduled for shipment are not subject to revision, reschedule or cancellation within thirty (30) days prior to the acknowledged shipment date quoted by Kenet. In the event that Buyer cancels or reschedules an order prior to such thirty (30) day period, Kenet reserves the right to invoice the Buyer a cancellation charge.

(c) Without prejudice to any rights or remedies Kenet may have under these Terms or at law, Kenet may, by written notice to Buyer, terminate these Terms, or any part thereof, without any liability whatsoever, if: (i) Buyer fails to make payment for any Products to Kenet when due; (ii) Buyer fails to accept conforming Products supplied hereunder; (iii) a voluntary or involuntary petition in bankruptcy or winding up is filed against Buyer, any proceedings in insolvency or bankruptcy (including reorganization) are instituted against Buyer, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer; or (iv) Buyer violates or breaches any of the provisions of these Terms. Upon occurrence of any of the events referred to above under (i) through (iv), all payments to be made by Buyer under the Agreement shall become immediately due and payable. In the event of any termination of these Terms, Sections 7, 9, 10, 11, 12, and 16-23 shall survive.

(d) In the event of any default by Buyer, Kenet may decline to make further shipments. If Kenet elects to continue to make shipments, Kenet's action shall not constitute a waiver of any default by Buyer or in any way affect Kenet's legal remedies for any such default.

**20. Export Control:** PRODUCTS SOLD BY KENET MAY FALL WITHIN THE GROUP OF "STRATEGIC" ELECTRONIC PRODUCTS OR TECHNICAL DATA THAT ARE WHOLLY OR PARTLY OF U.S. ORIGIN OR TECHNOLOGY, THE EXPORT OF WHICH ARE SUBJECT TO UNITED STATES EXPORT AND RE-EXPORT CONTROL REGULATIONS. BUYER WILL BE RESPONSIBLE FOR COMPLYING WITH THE LATEST UNITED STATES EXPORT REGULATIONS AND SHALL NOT EXPORT OR RE-EXPORT, DIRECTLY OR INDIRECTLY (INCLUDING VIA REMOTE ACCESS), THE PRODUCTS (OR ANY PORTION THEREOF), DOCUMENTATION OR OTHER INFORMATION OR MATERIALS PROVIDED BY KENET HEREUNDER, TO ANY COUNTRY FOR WHICH THE UNITED STATES OR ANY OTHER RELEVANT JURISDICTION REQUIRES ANY EXPORT LICENSE OR OTHER GOVERNMENTAL APPROVAL AT THE TIME OF EXPORT WITHOUT FIRST OBTAINING SUCH LICENSES OR APPROVALS. BUYER SHALL DEFEND AND INDEMNIFY KENET FROM AND AGAINST ANY DAMAGES, FINES, PENALTIES, ASSESSMENTS, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) ARISING OUT OF ANY CLAIM THAT THE PRODUCTS, DOCUMENTATION OR OTHER INFORMATION OR MATERIALS PROVIDED BY KENET HEREUNDER WERE EXPORTED OR OTHERWISE ACCESSED, SHIPPED OR TRANSPORTED IN VIOLATION OF APPLICABLE LAWS AND REGULATIONS.

**21. U.S. Government Contracts:** If the Products are to be used in connection with or under a U.S. Government contract or subcontract, those mandatory clauses, except as noted below, of the applicable U.S. Government procurement regulations for sale contracts of the same type, amount and tier as this sale contract, shall be incorporated by reference, unless Kenet takes exception thereto or receives a waiver therefrom. Unless Kenet specifically agrees otherwise in writing, Kenet takes exception to any and all requirements for certification in writing of cost or pricing data, compliance with Cost Accounting Standards, defective Pricing, and Audit requirements.

**22. Confidentiality:** (a) **Confidential Information.** *Confidential Information* of a party means all information of that party (a *Discloser*) relating to or disclosed to the other party (a *Recipient*) by or on behalf of the Discloser which is or should be reasonably understood by the Recipient to be confidential or proprietary to the Discloser, including, but not limited to, the material provisions of these Terms, pricing for the Products, documentation, technical processes and formulas, Product designs, sales, cost and other unpublished financial information, product and business plans, projections, and marketing data. Confidential Information does not include information that: (a) was known to the Recipient before receipt from Discloser; (b) is obtained by the Recipient from any third person not owing any confidentiality obligation to the Discloser; (c) is or becomes generally known in the trade through no act or omission of the Recipient; or (d) is independently developed by the Recipient or Recipient's employees who have not had direct or indirect access to Discloser's Confidential Information. Recipient will bear the burden of establishing any of these exclusions. Only the specific information that meets the exclusions will be excluded, and not any other information that happens to appear in proximity to the excluded portions (for example, a portion of a document may be excluded without affecting the confidential nature of those portions that do not themselves qualify for exclusion).

(b) **Permitted Use.** Confidential Information of each party will be used by the other party solely for the purposes permitted by these Terms. All Confidential Information will be received and held in confidence by the receiving party, subject to the provisions of these Terms. Each party acknowledges that it will not obtain any rights of any sort in or to the Confidential Information of the other party as a result of such disclosure and that any such rights must be the subject of separate written agreement(s). Either party may only disclose the general nature, but not the specific financial terms, of these Terms without the prior consent of the other

party; provided each party may provide a copy of these Terms to any finance provider in conjunction with a financing transaction, if such finance provider agrees to keep these Terms confidential.

**(c) Required Disclosures.** Nothing herein shall prevent either party from disclosing all or part of the Confidential Information of the other as necessary pursuant to the lawful requirement of a governmental agency or when disclosure is required by operation of law; provided that prior to any such disclosure, a Recipient shall use reasonable efforts to (i) promptly notify the Discloser in writing of such requirement to disclose, and (ii) cooperate fully with the Discloser in protecting against any such disclosure or obtaining a protective order. Recipient may comply with any such court order or other legal requirement, but any information so disclosed shall continue to be treated as Confidential Information hereunder.

**(d) Equitable Relief.** Money damages will not be an adequate remedy if this Section 22 is breached and, therefore, each party shall, in addition to any other legal or equitable remedies, be entitled to an injunction or similar equitable relief against such breach or threatened breach without the necessity of posting any bond or surety.

## **23. GENERAL.**

**23.1 Notices.** All communications under these Terms shall be in writing or by confirmed fax, and shall be deemed to have been duly given (i) upon personal delivery, (ii) upon deposit in the mail if mailed by certified mail, return receipt requested, postage prepaid, (iii) upon deposit with a recognized courier with next-day delivery instructions, or (iv) upon confirmation of transmission, if sent by confirmed fax, to the address or fax number set forth below or such other address or fax number as either party may specify by notice sent in accordance with this Section 23.1.

**23.2 Severability.** In the event that any provision of these Terms shall, in whole or in part, be determined to be invalid, unenforceable or void for any reason, such determination shall affect only the portion of such provision determined to be invalid, unenforceable or void, and shall not affect in any way the remainder of such provision or any other provision of these Terms. The parties agree that they will negotiate in good faith or will permit a court or arbitrator to replace any provision of these Terms so held invalid, unenforceable or illegal with a valid provision that is as similar as possible in substance to the invalid, unenforceable or illegal provision.

**23.3 Waiver.** The waiver by Kenet of a breach or a default of any provision of these Terms by Buyer shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of Kenet to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by Kenet.

**23.4 Governing Law; Jurisdiction & Venue; Attorneys' Fees.** These Terms and the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without taking into account its principles on conflicts of law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. Exclusive jurisdiction and venue for any litigation arising under these Terms is in the federal and state courts located in Suffolk County, Massachusetts and both parties hereby consent to such jurisdiction and venue for this purpose. In any such action, suit or proceeding, the successful or prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in connection with that action, suit or proceeding, in addition to any other relief to which such party may be entitled.

**23.5 Relationship of the Parties.** Nothing contained in these Terms shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint venturers or partners for any purpose. Neither party shall have the authority to make any statements, representations or commitments or to take any actions which shall be binding on the other party, except as may be explicitly authorized in writing by such other party.

**23.6 Entire Agreement; Amendment; Assignments.** These Terms, together with information contained in Kenet's written product order acknowledgment and written invoice, (a) constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior understandings and agreements, whether written or oral, as to such subject matter; (b) may be amended or modified only by a writing executed by an authorized officer of the party against whom enforcement is sought; (c) may not be assigned by Buyer without the written consent of Kenet; and (d) shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

**23.7 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. This Agreement may be executed via facsimile transmission.

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