These general terms and conditions apply to all proposals, acknowledgments and/or invoices submitted by Wapro Inc. (“Seller”) for the sale of products and/or services (“Products”), to all related purchase orders, order releases and/or similar documents received by Seller, and to all Products sold by Seller, except as otherwise specifically provided in a document issued by Seller. Seller’s PROPOSALS ARE EXPRESSLY MADE CONDITIONAL ON BUYER’S ACCEPTANCE TO THE ADDITIONAL OR DIFFERENT TERMS SET FORTH BELOW WHICH REPRESENT THE SOLE AND EXCLUSIVE TERMS AND CONDITIONS OF SALE. Unless otherwise stated, any difference between Seller’s proposals and these terms and conditions (1) cancels the terms and conditions set forth herein, (2) serves as the sole and exclusive terms and conditions, and (2) any documents (such as drawings or other specifications) expressly and to the extent incorporated by reference therein, are referred to herein as the “Agreement.” The Agreement also includes any amendments made from time to time by the parties – but these terms and conditions of sale shall not be amended unless in writing. The rights and obligations of the terms and conditions set forth herein will be binding upon Seller, unless such amendment, modification or rescission is agreed to in writing, makes express reference to amending these terms and conditions, and is signed by the President of Seller. Buyer’s acceptance of the Agreement is limited to acceptance of the terms and conditions set forth herein. Any proposal for additional or different terms or any attempt by Buyer to vary in any way any of the terms of this Agreement in Buyer’s acceptance are hereby objected to and rejected. THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE.

Section 2. Invoicing and Pricing. Prices for Products shall be as quoted by Seller or as otherwise mutually agreed in writing. Quoted prices are based on current costs, including costs of purchased components and raw materials. If, at any time after the date of quotation or proposal, Seller’s costs of purchased components or raw materials in the Products increases by any amount or if any surcharge is assessed on such purchased components or raw materials, then, in addition to the Product price, Buyer will pay such additional purchased component or raw material cost or surcharge effective as of the date such increase or surcharge is levied upon the Seller. Payment terms are as quoted by Seller or specified on Seller’s invoice or as otherwise agreed by the parties in writing. Maximum interest rate permitted by applicable law shall be assessed for each month payment is overdue on the invoice. Buyer shall be liable for all costs of collection, suit, and reasonable attorney’s fees. Any tax, duty or related charge which Seller is required to pay to or collect for a governmental authority with respect to services rendered or the sale, use or delivery of Products shall be billed to Buyer as a separate item, in addition to the prices provided for herein, and paid by Buyer unless a valid blanket exemption certificate or signed purchase order marked “For Resale” is furnished by Buyer to Seller. In the event Buyer requests changes to Products after the date of quotation, Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) associated with such changes. Where applicable, Seller may add to the price for the additional Products or portions of Products made necessary by incomplete or incorrect information received by Buyer. Buyer shall be liable for the sales of Buyer and Buyer’s agent, including loss or damage due to vandalism or theft, which may be stored by Seller for Buyer’s account and otherwise enforce its remedies for Buyer’s default. Buyer shall remain subject to Seller’s rights of stoppage in transit, rights of reclamation and repossession all Products and/or any other agreement with Buyer in whole or in part, and/or (3) recover Products in transit or under the Agreement and/or any other agreement between Seller and Buyer, (2) cease performance of its obligations or any attempt by Buyer to vary in any way any of the terms of this Agreement in Buyer’s acceptance are hereby objected to and rejected. THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE.

Section 3. Acceptance. Buyer shall accept any tender of Products which substantially conform to the description of the Products set forth in the Agreement. Seller’s standard acceptance procedures conducted by Seller’s representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been mutually agreed upon by the parties. If no acceptance is given, Seller shall be deemed to have accepted drawings, specifications, technical documentation, samples, prototypes and Products unless Buyer gives Seller notice in writing stating with specificity all defects and nonconformities upon which Buyer will rely to support its rejection within five (5) days after receipt of the Products. Failure to so act shall constitute an irrevocable acceptance of the Products by the Buyer. ALL DEFECTS AND NON-COMFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. If the Buyer rejects any tender of the Products or other items and if requested by Seller, Buyer shall return them to the Seller, pursuant to Seller’s directions. In the case of Buyer acceptance of non-conforming Products, Buyer shall immediately notify Seller whether or not Buyer will accept such Products. Buyer’s acceptance of non-conforming Products shall be a waiver by Buyer of any requirements for same products. In any event, if any Products have been altered from their original state, Buyer shall be deemed to have accepted such Products. Buyer’s acceptance of Products tendered under this Agreement shall be final and irrevocable. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to the remedies specifically provided in the Agreement. In respect of items manufactured by Seller to Buyer’s specifications, Buyer shall be held harmless from any claim arising out of the Products as a result of Buyer’s negligence or breach of any warranty, express or implied, or non-conformity. Any non-conformity shall be Buyer’s sole remedy. Buyer shall use the Products at Buyer’s own risk and Buyer shall indemnify Seller, its successors, officers, directors and agents against, and hold them harmless from, any and all claims, losses or expenses (including attorney fees) arising or alleged to arise, in whole or in part, from the manufacture, sale or use of the Products, including, but not limited to, infringement, products liability and other torts. Seller shall have the right to stop delivery if Buyer is in arrears with payment.

Section 4. Delivery and Returns. The Agreement shall be a shipment contract, and the Products shall be delivered EXW (Incoterms 2010) Seller’s designated facility, unless otherwise provided in the Agreement. Whether or not Seller prepaids shipping charges, title to Products delivered hereunder and risk of loss thereon shall pass to Buyer on the earlier of (i) the date of payment by Buyer for such Products, and (ii) when Seller or its agent delivers such Products to a common carrier, motor carrier, or licensed trucker consigned to or delivered to Buyer or Buyer’s agent, but such shipments shall remain subject to Seller’s rights of stoppage in transit, rights of rectification and other legal rights of Seller. Seller’s breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Whether or not title has passed to Buyer, all risk of loss or damage to the Products or to materials, supplies, equipment or scaffolds shall rest solely on Buyer, including loss or damage due to vandalism or theft, upon the date of delivery of such materials to Buyer.

When a shipping/delivery date is specified by Seller, that date reflects Seller’s estimate for the probable time required for completion of Buyer’s order, based on Seller’s then-current workload, raw material and labor availability, engineering and manufacturing capacity and scheduling. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller’s books. All shipping/delivery dates are further subject to Seller’s prompt receipt from Buyer of all drawings, information and approvals necessary to provide the Products and satisfaction of any other conditions under the Agreement. Seller shall not incur liability of any kind whatsoever for failure to ship on any particular date. Buyer shall pay all handling and other charges incidental to transportation of the Products.

If shipment of any Products or other performance by Seller is delayed at the request of or due to the fault of the Buyer, Seller may at its option hold the Products at the place of manufacture at the risk and expense of the Buyer from the time the Products are ready for shipment. In the event of any such delay, Buyer shall pay to Seller, 20% of the invoice price of such Products, immediately preceding the then-current scheduled delivery date, which will be invoiced at the time of shipment.

If Buyer fails, with or without cause, to furnish Seller with instructions for, or refuses to accept deliveries of, any of the Products sold under the Agreement, or is in default in otherwise provided all or any part of the Agreement or any other agreement with Seller, or advises Seller that it will default in the performance of any of its obligations, or fails to pay when due any invoice under the Agreement or any other agreement with Seller, or if any action is started by Buyer to take the property of an order for debts due to Seller, or if a trustee or receiver is appointed, or if any receivership or bankruptcy proceedings are instituted, or if any bankruptcy laws or remedies allowed by law, Seller may, without notice: (i) bill and declare due and payable amounts for all undelivered Products, work in process and raw material under the Agreement and/or any other agreement between Seller and Buyer, (ii) cease performance of its obligations and deliver shipment under the Agreement and/or any other agreement between Seller and Buyer, (iii) return such default, breach or repudiation, (iv) if after Buyer and Seller have entered into an agreement removing (1) any default, (2) all deferments, (3) all stoppages of the Products and/or any other agreement with Buyer in whole or in part, and/or (iv) recover Products in transit or delivered, retrieve delivered Products, repossess all Products which may be stored by Seller for Buyer’s account and otherwise enforce its remedies for Buyer’s default. Buyer shall remain liable for all damages suffered or incurred by Seller in any such circumstances, including, without limitation, for work in process and raw material. Seller shall be entitled to the remedies set forth herein, including, without limitation, for work in process and raw material. Seller shall have the right to stop delivery if Buyer is in arrears with payment.
be awarded incidental damages including, without limitation, reasonable profits and costs such as actual reasonable attorney fees in any proceeding to enforce its remedies in which it obtains relief for damages or injunctive relief. All rights granted to Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

5. Limited Express Warranty. Seller warrants to Buyer only, subject to the limitations and disclaimers of this Agreement, that the Products covered hereby shall be free from defects in workmanship and materials for a period of two (2) years from the documented date of purchase so long as the Product has been used in accordance with Seller’s instructions and recommendations under normal operating conditions. The foregoing warranty does not cover damage to the Product by external mechanical forces, such as interference from humans, animals or machinery, or other causes, such as interference from the warranty valid if the Product has been modified or altered in any way post-production. Furthermore, the foregoing warranty is not valid (a) if the Product is damaged due to exposure to high concentrations of chemical substances, (b) if the Product is damaged due to pressure surges and/or vacuum within the Product, (c) if flow velocities exceed 1.5m/s through the Product, or (d) if the Product and (d) if the Product and (d) if the Product is used in an application for which the Product is not designed and used in accordance with the instructions furnished by Seller from time to time, if any, or (e) if the Product is not using equipment by Seller from time to time, if any, (f) to the extent not reasonably practicable, Seller passes on to Buyer, and (g) Seller’s determination, adversely affects the condition or operation of the Products. The foregoing warranty shall not cover defects arising from designs which do not adhere to accepted industry design rules or artwork, either received by or generated by Seller, which are found to be incorrect due to incompleteness, incorrect revision level, ambiguity, or any other reason. Seller’s sole obligation to Buyer hereunder, and the sole and exclusive remedy of Buyer for breach of warranty, for Products failing to meet any applicable warranty shall be, at Seller’s discretion, to repair or replace the nonconforming Product or issue Buyer credit for the purchase price of the nonconforming Product, where within the warranty period 1) Seller has received written notice of any nonconformity, and 2) after Seller’s written authorization to do so Buyer has returned the nonconforming Product to Seller’s, freight prepaid, and Seller has determined that the Product is nonconforming and that such nonconformity is not a result of misuse, mishandling, neglect, accident, improper assembly, modifications, soldering, or other misuse by Buyer.

6. Limitation of Warranty. Limitation of Liability. Remedies. Indemnification. THE FOREGOING LIMITED WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE AND NONINFRINGEMENT. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SALE ANY OTHER PERSON TO ASSUME ANY OTHER PERSON TO ASSUME OR BIND SELLER IN ANY WAY. PRODUCTS OR SERVICE THAT AND NO MODIFICATIONS OF THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IT IS IN WRITING AND SIGNED BY BOTH PARTIES. NO WAIVER OF ANY PROVISION OF THIS AGREEMENT SHALL BE EFFECTIVE UNLESS MADE IN WRITING. NO WAIVER OF ANY BREACH OF ANY PROVISION OF THIS AGREEMENT.
shall constitute a waiver of any subsequent breach of the same or of any other provision of this Agreement. Buyer and Seller agree that this Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of New York. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded and shall have no effect on the Agreement. In the event that any dispute, claim, question or disagreement arising from or relating to this Agreement or a breach of this Agreement cannot be settled by good faith negotiations between the parties, either party may, by written notice to the other, demand arbitration of the matter. The arbitration will be conducted in accordance with the International Arbitration Rules ("Rules") of the American Arbitration Association ("AAA") except to the extent that the Rules conflict with or are modified by the provisions of this Section, in which event the provisions of this Section will control. The parties may request the AAA to select a single arbitrator that is a retired judge. Limited discovery will be conducted under guidelines set by the arbitrator. The decision of the arbitrator will be in accordance with applicable law and this Agreement, and will be supported by written findings of fact and conclusions of law, which will set forth the basis for the decision of the arbitrator. The decision of the arbitrator will be binding and conclusive. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction. Any such arbitration will be held in a reasonably convenient location acceptable to both parties in or near New York City. Section headings are for convenience only and shall not be considered in the interpretation of this Agreement. The provisions of this Agreement are severable and if any one or more such provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this Agreement shall nevertheless be binding on and be enforceable by and between the parties.

(Rev 12/2014)