

**PRECISE AUTOMATION INC.**  
**STANDARD TERMS AND CONDITIONS OF SALE, REVISION 1.7**

**1. Purchases and Sale of Products.**

1.1 Acceptance of Terms and Conditions.

All purchases and sales of hardware and software products, including all parts, spare parts and components thereof (the "Products") and services (the "Services") from Precise shall be made pursuant to an accompanying Precise quote and/or order acknowledgment and shall be governed by these Terms and Conditions. The Precise quote together with any specifically referenced supply agreement between Precise and the Buyer and/or sales order acknowledgment and/or purchased software licenses and these Terms and Conditions shall constitute the entire agreement between the parties pertaining to the subject matter hereof, and shall supersede all prior or contemporaneous oral or written negotiations, agreements, understandings or representations with respect thereto. In the case of a Buyer who has formerly purchased Products or Services, a signed copy of these Terms and Conditions on file shall be understood to apply to all future purchases until such time that the Terms and Conditions are amended or superseded by another signed document.

These Terms and Conditions shall supersede any conflicting provision contained in any purchase order of Buyer and, unless otherwise agreed to in writing, nothing contained in any purchase order of Buyer shall in any way modify or add any provision to these Terms and Conditions. Any terms or conditions proposed by Buyer or included in Buyer's purchase order are hereby objected to by Precise and have no effect unless expressly accepted by Precise in writing. These Terms and Conditions may not be amended or any provision hereof waived in any way except by an instrument in writing signed by both parties. IN THE EVENT THAT THE ACCOMPANYING PRECISE QUOTE IS DEEMED AN OFFER, ACCEPTANCE BY BUYER OF SUCH OFFER IS EXPRESSLY LIMITED TO THE TERMS CONTAINED HEREIN. ISSUANCE BY BUYER OF A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF THESE TERMS AND CONDITIONS. IN THE EVENT THAT THE ACCOMPANYING PRECISE QUOTE AND/OR ORDER ACKNOWLEDGMENT IS DEEMED AN ACCEPTANCE OF BUYER'S PURCHASE ORDER, SUCH ACCEPTANCE BY PRECISE OF BUYER'S PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON CONSENT TO ANY ADDITIONAL AND DIFFERENT TERMS CONTAINED HEREIN. FAILURE BY BUYER TO SPECIFICALLY OBJECT TO THESE TERMS AND CONDITIONS IN WRITING WITHIN TWENTY (20) DAYS OF RECEIPT SHALL CONSTITUTE AN ACCEPTANCE HEREOF.

1.2 Products.

As used herein, the term "Standard Products" shall mean Products within Precise's current catalog that have a listed part number and are manufactured based solely upon Precise's specifications. As used herein, the term "Custom Products" shall mean (i) Products that are specially designed and manufactured for Buyer based upon Buyer's specifications, and (ii) option configured Products. Precise shall manufacture and sell Standard Products and/or Custom Products to Buyer as set forth in the Precise quote and/or sales order acknowledgment.

**2. Pricing and Payment.**

2.1. Product Prices.

The prices for all Products and Services shall be as set forth in the Precise quote and/or sales order acknowledgment and such prices shall be exclusive of all taxes and other charges referenced in Section 2.3 below, all of which shall be paid by Buyer. Unless otherwise expressly agreed to in writing, such prices do not constitute payment for any rights to any technical data, proprietary rights, or patent rights relating to the Products.

2.2. Adjustments.

Unless otherwise stated in the Precise quote and/or sales order acknowledgment, the prices for the Products are based upon, and subject to, receipt from Buyer of a blanket purchase order for quantities of Products for a three (3) month period, to be manufactured and delivered in agreed upon batch quantities. The three (3) month period shall commence on the first date of shipment of Products under such purchase order. If Buyer does not receive and pay for the purchase order quantity of Products within such three (3) month period, or if Buyer deviates from the delivery batch size agreed to in the purchase order, Precise reserves the right to require payment from Buyer of (a) any unearned discounts, based upon the actual quantities of Products delivered during the three (3) month period, or upon the actual batch size ordered, and (b) any other charges as defined in this document related to the changing or cancellation of an order.

2.3 Taxes and Other Charges.

Buyer shall pay all packaging, transportation, handling, insurance, taxes (except for taxes based on Precise's income), license fees, import, export and customs fees and duties, tariffs and other charges related to the Products and Services purchased hereunder. If Precise is required to pay any such charges at the time of shipment or thereafter, Buyer shall immediately reimburse Precise for such charges and costs. If claiming tax exemption, Buyer must provide Precise with valid tax exemption certificates.

2.4 Invoicing, Payment Terms.

Providing credit has been established and unless otherwise agreed to in writing: (1) for all orders for Standard Products that are less than \$30,000, payment is due Net 30 days after shipment; (2) for all orders for Standard Products that are equal to or greater than \$30,000, a 50% down payment is required at the time the order is placed and the balance is due Net 30 days after shipment; and (3) for all orders for Custom Products, a 50% down payment is required at the time the order is placed and the balance is due Net 30 days after shipment. In all cases: (1) payment shall be in U.S. dollars; (2) any payment received later than 45 days after shipment is subject to a 1.5% per month penalty; and (3) for Standard Products, any series of similar orders shall be aggregated and deemed one order for the purpose of determining the dollar value of the order.

### **3. Delivery and Title.**

#### 3.1. Title and Risk of Loss.

All Products shall be EX Works ("EXW") Precise's designated factory. Title to the Products (except for title to any Software which shall at all times remain with Precise) shall pass from Precise to Buyer, and Buyer shall assume all risk of loss, upon delivery of the Products to the carrier, unless otherwise agreed to by both parties in writing. In no event shall Precise be liable for any delay in delivery (provided that Precise timely delivers such Products to the carrier as provided above), or assume any liability in connection with shipment, nor shall the carrier be deemed an agent of Precise.

#### 3.2. Delivery Schedule & Shipment.

Precise shall deliver the Products in accordance with the lead times specified in the Precise quote and/or sales order acknowledgment. In the absence of specific shipping instructions, Precise will ship by the best method. Transportation charges will be collected, or if prepaid, will be subsequently invoiced to Buyer. Unless otherwise expressly stated, Buyer is obligated to obtain insurance against damage to the material being shipped.

#### 3.3. Inspection and Acceptance.

Products will be subject to inspection for conformance with the applicable specifications at Buyer's receiving facilities within a reasonable time, but in no event more than ten (10) days after receipt. Buyer will notify Precise promptly of defective or nonconforming Products and, to the extent reasonably feasible, the nature of the defect. In the event that Precise does not receive a written notice of defect or nonconformity within ten (10) days after receipt by Buyer, such Products shall be deemed accepted by Buyer, provided, that such deemed acceptance shall not relieve Precise of its warranty obligations hereunder. In the event that any Product is properly rejected by Buyer within the inspection period, Buyer may return the Product to Precise, and Precise shall repair or replace any Product found to be defective or non-conforming, and shall deliver to Buyer a repaired or replacement Product FOB Precise's designated facility. Precise shall be responsible for payment of all shipping charges in connection therewith.

### **4. Cancellations.**

#### 4.1 Permitted Cancellation.

Any order for Standard Products (excluding motors) that does not exceed \$5,000 (it being agreed that any series of similar orders for Standard Products shall be aggregated and deemed one order for the purpose of determining such amount) may be cancelled by Buyer without a charge by providing written notice to Precise prior to the scheduled shipment date.

#### 4.2 Cancellation with Prior Approval.

Any order for Custom Products (including motors), or any order or series of similar orders for Standard Products that exceeds \$5,000, may be cancelled only upon Precise's prior written approval and will be subject to the cancellation charges set forth in Section 4.3 below. Precise must receive Buyer's cancellation request at least thirty (30) days prior to the scheduled shipment date of any such order for a cancellation request to be considered.

#### 4.3. Cancellation Charges.

In the event that Buyer cancels an order pursuant to Section 4.2, Buyer shall pay to Precise the following amounts relating to such order: (i) for any Standard Products, 30% of the total price of the products; (ii) for any Custom Products, (a) 50% of the total price of the products (b) plus other reasonable cancellation charges, including, but not limited to, the burdened cost of all raw material in Precise's possession or on non-cancelable orders placed in order to timely deliver the Custom Products together with the cost of all labor applied to such material the total of which is in excess 50% of the total price of the Custom Products, non-recurring engineering expenses, cancellation costs payable by Precise to its suppliers, and any other costs incurred by Precise relating to such cancellation. In the event of any such cancellation, Buyer shall also pay to Precise the amounts set forth in the foregoing sentences with respect to any additional stock of Products that Buyer has requested Precise to maintain in inventory in order to meet Buyer's requirements. All such amounts shall be payable in U.S. dollars and are due immediately upon acceptance of the cancellation request.

### **5. Returns.**

Orders for both Standard and Custom Products are non-returnable and non-refundable. Products can only be returned when they are defective and only for exchange subject to the terms of the Product Warranty, Section 7. Prior to return of a Product, Buyer must contact Precise's Sales Operations Department for shipping instructions and a return material authorization ("RMA") number. Buyer must ship the Product back in the original or equivalent packaging with the RMA number clearly marked on the outside of the box, freight prepaid. Precise shall not be responsible for any damage occurring in transit or obligated to accept Products returned without a RMA number. Buyer bears all risk of loss or damage to the returned Products until delivery at Precises' designated facility.

### **6. License to Use Software.**

Buyer acknowledges that the software or firmware components or applications, if any, comprising a Product or accompanying the Products sold hereunder, or provided in connection with Services (collectively, the "Software") are licensed and not sold to Buyer. Upon receipt of full payment for a Product or other applicable license fee, Precise grants to Buyer a single, limited, nonexclusive, nontransferable (except in connection with the sale of the Product in combination with Buyer's products to Buyer's customers), and royalty-free license to use and execute a single copy of such Software and related documentation in object code form only and only in conjunction with the operation of the Product. Buyer shall not use the Software or related documentation for any other purpose without the express prior written consent of Precise. Buyer shall not, nor shall it permit any employee or agent of Buyer to, adapt, modify, copy (except to make a backup copy), reproduce, reverse engineer, decompile, disassemble, distribute, prepare derivative works based on, or demonstrate the Software or related documentation in any way without the express prior written consent of Precise. Buyer shall not license, sublicense, resell or otherwise transfer the Software or related documentation to any third party (except in connection with the sale of the Products in combination with Buyer's products to Buyer's customers) without the express prior written consent of Precise. As between Precise and Buyer, Precise shall retain all right, title, and interest in and to the Software, and Buyer shall receive no rights to the Software except as expressly provided herein. No license to use the source code of the

Software is provided hereunder. Except as expressly set forth herein, Precise shall have no obligations to Buyer whatsoever with regard to the Software. Without limiting the generality of the foregoing, Precise has no obligation to develop updates, upgrades or modifications to the Software or develop or provide Software development tools to Buyer. Buyer acknowledges and agrees that Precise will have no liability whatsoever to Buyer (or any third party through Buyer) as a result of any modification of the Software not made by Precise or any discontinuation of the Software.

## **7. Warranties; Disclaimer of Warranties.**

### **7.1 Product Warranty.**

Precise warrants that, for a period of twelve (12) months from the date of shipment from Precise, all Products shall be free from defects in material and workmanship, and will conform to the applicable specifications, under normal use and service when correctly installed and maintained. During the warranty period, Precise will promptly repair or replace, at Precise's sole discretion, any Product or part that is defective or fails to adhere to published specifications (for Standard Products) or written specifications contained in the Precise quote and/or sales order acknowledgment (for Custom Products). For warranty service requiring return of a Product or part to Precise, see Returns, Section 5.

#### **7.1.2 Exclusions.**

This warranty does not apply to any Product which is (a) repaired, modified or altered by any party other than Precise; (b) used in conjunction with equipment not provided or authorized by Precise, or incorporated into end-user products not specified as part of the applicable specifications; (c) subjected to unusual physical, thermal, or electrical stress, improper installation, misuse, abuse, accident or negligence in use, storage, transportation or handling, alteration, tampering, NTF (no trouble found) or faulty repair, or (d) considered a consumable item or item requiring repair or replacement due to normal wear and tear. In addition, this warranty does not apply to any defects in 1) Buyer's products or any components supplied by a third party thereof or, 2) the negligence of Buyer or any other person providing goods or services in connection with the design, development, production and distribution of the Product (with the exception of Precise's assembly of the Product). On-site repair service is not covered under the foregoing warranty.

### **7.2 Software Warranty; Disclosure of Software Warranty**

#### **7.2.1. Warranty.**

Precise warrants that, for a period of twelve (12) months following the date of shipment, the Software shall be free from significant programming errors or defects when properly installed. During the warranty period, if Buyer promptly notifies Precise in writing of possible errors or defects in the Software, identifying any such error or defect in reasonable detail sufficient to allow Precise to identify and replicate such error or defect, Precise shall, at no cost to Buyer, use commercially reasonable efforts to repair and correct such errors or defects in the Software.

#### **7.2.2 Exclusions.**

The warranty set forth above shall not apply to any errors or defects in the Software to the extent caused in whole or in part by (a) any combination of the Software with functionality, software, hardware or other products not supplied or approved by Precise; (b) any modification of the Software not made by Precise or modifications made by Precise but to Buyer's written specifications; or (c) the failure of Buyer to use the most current release of the Software provided to Buyer or to follow the most current instructions as may be provided by Precise from time to time with respect to the proper use of the Software. This warranty does not apply to, and does not obligate Precise to develop or to provide, any future releases, updates, upgrades or modifications to the Software or develop or provide Software development tools to Buyer. On-site repair service is not covered under the foregoing warranty.

### **7.3 DISCLAIMER OF WARRANTIES; EXCLUSIVE REMEDY.**

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PRECISE MAKES NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS, SOFTWARE OR SERVICES. PRECISE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR THE PRODUCTS, SOFTWARE OR SERVICES. PRECISE DOES NOT WARRANT THAT THE SOFTWARE WILL MEET BUYER'S REQUIREMENTS, WILL FUNCTION PROPERLY IN COMBINATION WITH OTHER EQUIPMENT, HARDWARE AND/OR SOFTWARE, WILL BE ERROR FREE, OR THAT ALL DEFECTS WILL BE CORRECTED. THE OBLIGATIONS OF PRECISE SET FORTH IN THIS SECTION 7 SHALL BE PRECISE'S SOLE LIABILITY, AND BUYER'S SOLE REMEDY, FOR BREACH OF THE FOREGOING WARRANTY. IN THE EVENT THE REMEDIES PROVIDED FAIL OF THEIR ESSENTIAL PURPOSE, PRECISE SHOULD HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO REFUND THE MONEY PAID FOR THE PARTICULAR PRODUCT LESS A REASONABLE AMOUNT FOR ITS USE.

### **7.4 Technical Support.**

For a period of three (3) months from the date of shipment of the Products, Precise will provide reasonable telephone or email technical support services, during normal business hours at no additional cost, for Products or Software purchased directly from Precise. Such support does not include support relating to the integration of a Product with any other product or software, which shall be provided at Precise's discretion at its then-current rates. After three (3) months, Precise will charge per hour for telephone technical support plus travel expense for on site technical support at Precise's then-current rates. Products purchased through 3<sup>rd</sup> party organizations such as Systems Integrators or Distributors are supported by those organizations.

#### **7.4.1 Non-Warranty Repair Service.**

On-site repair service is not covered under the foregoing warranties. For on-site repair service, or for any other repair service for the Products or the Software that is not covered by the foregoing warranties, Buyer shall pay for such repair service (including travel time, if applicable) at Precise's then-current labor and materials rates, and shall reimburse Precise for its reasonable travel and lodging expenses. Repairs are warranted for 90 days following shipment of the repaired Product to Buyer.

## **8. Indemnity.**

### 8.1. Precise's Indemnity.

Precise shall indemnify and hold harmless Buyer from any final award of damages in any suit or proceeding instituted against Buyer based upon a claim that a Product or the Software sold or licensed hereunder infringes any patent or copyright of a third party. Precise shall defend, at its expense, any such suit or proceeding provided that: (a) Buyer gives Precise prompt notice in writing of any such suit and permits Precise through counsel of its choice, to answer the charge of infringement and defend such suit; and (b) Buyer gives Precise all the needed information, assistance and authority, at Precise's expense to enable Precise to defend such suit. Precise shall not be responsible for payment of any amounts under any settlement made without its prior written consent. The foregoing indemnity shall not apply to the extent such alleged or actual infringement arises as a result of (i) the use or incorporation of such Product or Software in a manner or in combination or in conjunction with any other products, devices or parts not specified in Precise's specifications therefore, or (ii) Precise's compliance with any of Buyer's designs, specifications or instructions. In the event that a court of competent jurisdiction determines in a final, nonappealable order that the Product or the Software is infringing in a manner for which Precise is obligated to indemnify Buyer pursuant to this Section 8.1, Precise shall, at its option, either (1) procure for Buyer the right to continue using such infringing Product or Software; (2) replace the infringing Product or Software with a non-infringing item of like form, fit or function; (3) modify the Product or Software so that it no longer infringes; or (4) remove the Product or Software and refund the purchase price to Buyer.

THIS SECTION STATES PRECISE'S SOLE RESPONSIBILITY AND LIABILITY, AND THE BUYER'S SOLE REMEDY, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT OR COPYRIGHT BY ANY PRODUCT OR SOFTWARE DELIVERED HEREUNDER OR ANY PARTS THEREOF. THIS SECTION IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTIES AGAINST INFRINGEMENT. IN NO EVENT SHALL PRECISE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT.

### 8.2 Buyer's Indemnity.

Buyer shall indemnify and hold harmless Precise from and against any expense or loss resulting from any actual or alleged infringement of any patent or copyright arising as a result of (a) Precise's compliance with any of Buyer's designs, specifications or instructions, or (b) the use or incorporation of such Product or Software in a manner or in combination or in conjunction with any other products, devices or parts not specified in Precise's specifications therefore. Buyer shall defend, at its expense, any suit brought against Precise alleging any such infringement provided that Precise (i) gives Buyer prompt notice of any such suit and permits Buyer, through counsel of its choice, to defend such suit and (ii) gives Buyer all needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend any such suit.

## **9. CUSTOMER FURNISHED MATERIAL**

9.1. In the event that Buyer, with Precise's prior approval, provides products, raw materials, fixtures or tools (collectively, the "Customer Furnished Material" or "CFM") to Precise for incorporation into, or use in the manufacture of, the Products, or in conjunction with the Services, Buyer shall retain title to, and shall continue to bear all risk of loss or damage to, such CFM. CFM IS PROVIDED BY BUYER AT BUYER'S RISK. IN NO EVENT SHALL PRECISE BE LIABLE FOR ANY LOSS OR DAMAGE TO SUCH CFM RESULTING FROM ANY CAUSE WHILE IN PRECISE'S POSSESSION. BUYER SHALL BE SOLELY RESPONSIBLE FOR INSURING THE CFM AGAINST ANY SUCH LOSS OR DAMAGE.

9.2. CFM certification and quality are the responsibility of Buyer. All CFM is subject to inspection by Precise upon receipt, and Precise reserves the right to refuse the CFM and/or requote the order based upon such inspection. CFM is not guaranteed to yield Buyer's total order quantity. If material shortages occur due to yield, Buyer shall, at its option, either supply additional CFM to complete the order or close the order short. Any CFM not used by Precise will be returned to Buyer, at Buyer's risk and expense.

## **10. LIMITATION OF LIABILITY**

PRECISE SHALL NOT BE LIABLE FOR ANY COMMERCIAL LOSSES, LOSS OF REVENUES, PROFITS OR ANTICIPATED REVENUES OR PROFITS, LOSS OF GOOD WILL, INCONVENIENCE, OR EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, OR CLAIMS OF THIRD PARTIES, REGARDLESS OF THE FORM OF ANY CLAIM, WHETHER IN CONTRACT OR TORT, WHETHER FROM BREACH OF THESE TERMS AND CONDITIONS, OR DEFECTIVE PRODUCTS OR SOFTWARE, OR ARISING FROM BUYER'S INABILITY TO USE THE PRODUCTS OR SOFTWARE EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT, OR FROM LOSS OF DATA OR FROM ANY OTHER USE, EVEN IF PRECISE HAS BEEN ADVISED OR SHOULD BE AWARE OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL PRECISE'S LIABILITY FOR LOSS OR DAMAGES EXCEED THE AMOUNT PAID BY BUYER FOR THE PRODUCTS, SOFTWARE OR SERVICES FROM WHICH SUCH LIABILITY ARISES.

## **11. Ownership and Grant of Rights**

### 11.1. Buyer Rights.

Unless otherwise specifically agreed to in writing by the Buyer and Precise, as between the Buyer and Precise, Buyer retains all right, title and interest in and to all specifications provided by Buyer to Precise, and all inventions, ideas, processes, methods, know-how, skills and techniques independently developed, discovered or conceived by Buyer or its employees (the "Buyer Rights"). Such rights include, but are not limited to, patent rights, copyrights, trade secret rights, trademark rights, mask work rights and other proprietary rights throughout the world. Buyer hereby grants to Precise a nonexclusive, worldwide, limited license to use and exploit the Buyer Rights solely to the extent required for Precise to perform its obligations and exercise its rights hereunder, including without limitation the use and exploitation of the Precise Rights as set forth in Section 11.2.

### 11.2. Precise Rights.

Unless otherwise specifically agreed to in writing by the Buyer and Precise, as between the Buyer and Precise, Precise retains all right, title and interest in and to all inventions, ideas, processes, methods, know-how, skills and techniques independently developed, discovered or conceived by Precise or its employees, including without limitation those developed and/or used in connection with the manufacture of the Products or performing Services hereunder (collectively, the "Precise Rights"). Such rights include, but are not limited to, patent rights, copyrights, trade secret rights, trademark rights, mask work rights and other proprietary rights throughout the world. Precise hereby grants to the Buyer a nonexclusive, nontransferable, worldwide, limited license to use and exploit the Precise Rights solely to the extent required for the Buyer to use the Products or Software sold or licensed hereunder.

**12. Exceptions to Performance.**

Precise's performance of its obligations will be excused or the timeframe for performance will be extended as is reasonably necessary under the circumstances, in the event that Precise is prevented from performing its obligations in whole or in part by riots, fire, flood, earthquake, explosion, epidemics, war, strike or labor disputes, embargo, civil or military authority, act of God, changes in law, regulation or governmental policy, acts or omissions of vendors or suppliers, transportation difficulties or delays, or other causes beyond its reasonable control. In the event that Precise is prevented from or delayed in performing its obligations for reasons beyond its control, such performance shall take place as soon thereafter as is reasonably practicable. Failure of the Buyer to provide timely response to technical information requests from the Precise may also result in delivery delays. In this case, Precise shall inform the Buyer in writing as soon as practicable of the reason for the delay and the anticipated new delivery date.

**13. Export.**

Buyer acknowledges and agrees that the Ultimate Destination of the Products and Software is in the United States of America, unless otherwise indicated in the Precise quote and/or sales order acknowledgment. Buyer shall not, nor shall Buyer authorize or permit its employees, distributors, customers, and/or agents to, export or re-export any of the Products or Software (including any information relating thereto) to any foreign national, nation, firm, or country, including foreign nationals employed by or associated with Buyer, without first complying with all U.S. laws, regulations or ordinances including the International Traffic in Arms Regulation (ITAR) and the Export Administration Regulation (EAR), including the requirement for obtaining an export license, if applicable. Buyer agrees to defend, indemnify, and hold harmless Precise from and against any claim, loss, liability, expense, or damage (including liens or legal fees) incurred by Precise with respect to any of Buyer's export or re-export activities contrary to this provision.

**14. Severability.**

If any provision of these Terms and Conditions is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall remain, nevertheless, in full force and effect. The parties agree to renegotiate in good faith any term held invalid and to be bound by the mutually agreed substitute provision in order to give the most approximate effect intended by the parties.

**15. No Waiver.**

No waiver of any provision of these Terms and Conditions shall be valid or binding on any party unless agreed to in writing by the party to be charged. The failure of either party to enforce at any time any of the provisions of these Terms and Conditions, or the failure to require at any time performance by the other party of any of the provisions of these Terms and Conditions, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.

**16. Remedies.**

Precise shall have the right to terminate any order, or to delay the shipment thereof, by reason of (a) Buyer's bankruptcy or insolvency, or the pendency of any proceedings against Buyer under any statute for the relief of debtors; (b) Buyer's breach of these Terms and Conditions; (c) Precise's learning that the ultimate destination of the Products is other than that set forth in the Precise quote and/or sales order acknowledgment, or (d) failure of Buyer to meet any other reasonable requirements established by Precise (including acts or omissions of Buyer which may delay production).

**17. Governing Law; Jurisdiction and Venue.**

These Terms and Conditions shall be construed under and according to the laws of the State of California without regard to its conflict of law provisions. The parties agree that jurisdiction and venue for any actions relating to these Terms and Conditions will be in the state or federal courts located in the County of Santa Clara, State of California. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in County of Santa Clara, State of California, for the adjudication of any dispute hereunder or in connection herewith and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or that such suit, action or proceeding is improper.

**18. Attorney's Fees.**

In the event of any action, suit or proceeding relating to the subject matter hereof, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to recover its reasonable attorneys' fees and related costs from the non-prevailing party.