

METALFRIO TERMS OF SALE and POLICIES [LINK ON WEBSITE]

STANDARD TERMS AND CONDITIONS OF SALE

The sale and purchase of METALFRIO Products (as defined herein) is governed by one of the following “terms and conditions” Agreements listed below. Please review carefully.

I. Commercial Terms and Conditions of Sale.[LINKED] This agreement at pages 1 through 9 applies to purchases by Commercial Customer (including Small, Medium and Large Business and Government and Public sector customers) buyers of METALFRIO products and services.

II. Reseller Terms and Conditions of Sale.[LINKED] This agreement at pages 9 through 25 applies to all purchases of METALFRIO products directly from METALFRIO or from a METALFRIO authorized distributor that the buyer (including persons and entities) intends to resell to others.

I. Commercial Terms and Conditions of Sale.

Unless otherwise agreed to in writing by METALFRIO, these Commercial Terms and Conditions of Sale (the “Agreement”) apply to direct commercial purchasers (including Small, Medium and Large Business and Government and Public sector customers) of METALFRIO products and commercial end-users who purchase through a reseller (each a “Buyer”). By placing your order as a Buyer, you accept and agree to be bound to the terms and conditions set forth in this Agreement.

1. Terms of Sale

These standard terms and conditions (“Terms”) govern all sales of products (collectively, the “Products”) by Metalfrío Solutions, Inc. or any of its subsidiaries, divisions, affiliates or related entities (“Metalfrío”) to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders, electronic orders, verbal or written quotations, or any other writings or communications from Metalfrío and/or Buyer relating to the Products (collectively, the “Purchase Orders”). Upon Metalfrío’s express acceptance by its issuance of its written invoice (“INVOICE”) or upon commencement of performance by Metalfrío, this Agreement, these Terms and the Purchase Orders become a binding contract between Buyer and Metalfrío (the “Sales Agreement”). In case of any conflict between these Terms and the terms of a Purchase Order, these Terms prevail except where Metalfrío has expressly accepted the conflicting term from the Purchase Order in its INVOICE. Absent such express written acceptance by Metalfrío, any such conflicting or additional terms proposed by Buyer are expressly rejected by Metalfrío. Except as otherwise set forth in these Terms, Metalfrío must specifically agree to any addition or change to this Agreement in its INVOICE or pursuant to a non-electronic writing signed by a duly authorized representative of Metalfrío before becoming binding on Metalfrío.

ANY USE OF YOUR PRE-PRINTED FORMS, SUCH AS PURCHASE ORDERS, ARE

FOR CONVENIENCE ONLY, AND ANY PRE-PRINTED TERMS SET FORTH THEREIN THAT ARE IN ADDITION TO, INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THIS AGREEMENT SHALL BE GIVEN NO FORCE OR EFFECT.

2. Price

In addition to the price of the Products as set forth in the Sales Agreement, Buyer agrees to pay to Metalfrío any and all sales, use, excise, or similar taxes applicable to the sale of the Products and such other costs and expenses described in these Terms.

3. Payment

Buyer must make payment to Metalfrío in the currency stated on the INVOICE within thirty (30) days of Buyer's receipt of the Products or the date of the INVOICE for the Products, whichever is sooner. Payments not received by Metalfrío when due may, at Metalfrío's sole discretion, bear interest at the lower of twelve percent (12%) per annum or the maximum rate allowed by applicable law. Metalfrío reserves the right to limit or cancel the credit of Buyer, and Metalfrío may require or demand advance payment and/or adequate assurances of performance from Buyer prior to taking any preparatory steps for performing under the Sales Agreement or beginning the manufacture of the Products. Metalfrío will not schedule Products for manufacture with payment terms of "Cash in Advance" until paid in full by Buyer. Metalfrío may impose order limits on Buyer if payment terms are "Cash on Delivery." If Buyer becomes the subject of a bankruptcy proceeding under Title 11 of the United States Code ("Bankruptcy Proceeding") or other insolvency proceeding, or fails to pay Metalfrío's INVOICES as they become due, Buyer agrees and consents that Metalfrío has the right and is entitled to: (a) delay or cancel any Sales Agreement then outstanding and receive full reimbursement for its cancellation damages pursuant to Paragraph 12 below; (b) modify terms prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any shipment.

Attorney Fees and Costs of Collection. Buyer agrees that Metalfrío has and reserves the right to seek collection from Buyer of all overdue amounts and claims through all lawful means, including, but not limited to: (i) the initiation of legal proceedings against Buyer in the courts of law identified in ¶ 18(b.), and (ii) the presentation, collection and defense of its claim pursuant to a contested matter or adversary proceeding initiated by or against Metalfrío in a Bankruptcy Proceeding. Buyer agrees that in any such legal proceeding brought or initiated under (i) and/or (ii), above, Buyer agrees that Metalfrío is entitled to recover all of its reasonable legal fees (including reasonable attorneys fees) and costs associated with such collection and legal proceedings.

4. Product Specifications

Unless otherwise agreed to in writing between Metalfrío and Buyer, Metalfrío will manufacture all of the Products in accordance with its own specifications ("Standard Specifications").

5. Product Packaging

Metalfrío will endeavor to comply with Buyer's packaging specifications for Products, if any, but Metalfrío reserves the right to substitute any other methods of packaging that is reasonably comparable to the specifications furnished by Buyer.

6. Product Delivery

Metalfrio will deliver the Products EX Works Metalfrio's facility ("EXW"; as defined and governed by ICC Incoterms 2000), pursuant to applicable freight classifications. Buyer must pay all transportation costs of the Products. Metalfrio may make partial shipments at Metalfrio's sole discretion. If Buyer refuses to accept tender or delivery of any of the Products, such Products will be held by Metalfrio awaiting Buyer's instruction for twenty (20) days, after which Metalfrio may deem the Products abandoned and dispose of them as it sees fit, without crediting Buyer's account. A delivery date indicated in the INVOICE is not binding on Metalfrio. A delivery date indicated in an INVOICE by Metalfrio is estimated but is not guaranteed. Metalfrio will endeavor to meet the delivery date specified by Buyer. If Metalfrio is unable to meet that date, Buyer has no claim for damages resulting from any such delay in delivery. Buyer acknowledges that notwithstanding the foregoing, the following events may cause Metalfrio's failure to perform any of Metalfrio's obligations under the Sales Agreement (collectively, the events are "Delaying Events" and each event is a "Delaying Event"): (a) any cause beyond Metalfrio's reasonable control, including, but not limited to, a labor dispute, industry disturbance, fires, unusually severe weather conditions, earthquakes, floods, declared or undeclared war, epidemics, computer malfunctions, civil unrest, riots, lack of supplies, delay in transportation, governmental, regulatory or legal action, act of God; or (b) by acts or omissions of Buyer, including, but not limited to, Buyer's failure to promptly comply with the terms of payment under the Sales Agreement. Any date of delivery may be extended for a period equal to the time lost by reason of any Delaying Event. Metalfrio reserves the right to cancel without liability any Sales Agreement, the shipment of which is or may be delayed for more than thirty (30) days by reason of any Delaying Event. Metalfrio reserves the right to allocate in its sole discretion among customers or potential customers, or defer or delay the shipment of, any of the Products, which is in short supply.

7. Title and Risk of Loss

Title to the Products and all risk of loss to the Products pass to Buyer upon the EXW delivery of the Products by Metalfrio. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Metalfrio. Any special tools, dies or fixtures which are used by Metalfrio to develop or manufacture any of the Products shall become and remain Metalfrio's property.

8. New Equipment Sales Warranty and Disclaimer

Metalfrio warrants that the Products are free from non-conformity to its Standard Specifications (the "New Equipment Sales Warranty") as set forth and stated on Metalfrio's website at <http://www.metalfrio.com>., which New Equipment Sales Warranty may be amended from time-to-time, and, which is incorporated herein for all purposes. This warranty is extended to the original Buyer for the period expiring eighteen (18) months after the EXW delivery of the Products and is not transferable. Metalfrio and Buyer may agree on a one-time basis by written agreement to alter or modify the terms of the New Equipment Sales Warranty ("Warranty Modification Agreement") executed by the parties on or before the date of issuance of the INVOICE, provided, however, that any Warranty Modification Agreement is limited to a

specific INVOICE and specific Product identified by the INVOICE purchased by Buyer which INVOICE must be identified in the Warranty Modification Agreement to be valid and enforceable.

UNLESS EXPRESSLY STATED IN THE SALES AGREEMENT, METALFRIO DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS PARAGRAPH SURVIVES THE TERMINATION OR CANCELLATION OF THE SALES AGREEMENT.

Use of Buyer's part number in any documents evidencing the Sales Agreement or on the Products is for convenience only and does not constitute any representation by Metalfrío with respect to performance, specifications, or fitness of any part for any purpose.

9. Conditions of Applicability of New Equipment Sales Warranty

The New Equipment Sales Warranty is of no effect if: (a) the Products are not stored, handled or serviced appropriately; (b) the non-conformity of the Products resulted from damages occurring after the EXW delivery of the Products, whether by misuse, accident or improper application or maintenance; (c) the non-conformity of the Products has not been reported to Metalfrío in writing within eighteen(18) months after the EXW delivery of the Products; or (d) the non-conformity should have been discovered by Buyer in Buyer's inspection and it is not reported in writing within ten (10) days after the EXW delivery of the Products. If Buyer or any purchaser from Buyer shall alter or modify the Products without Metalfrío's prior written consent, and any claims are asserted against Metalfrío by reason of such alternation or modification, Buyer shall defend, indemnify, and hold Metalfrío harmless against any and all damages, liabilities, expenses and costs in connection therewith or resulting therefrom.

10. Non-Conforming Products

If the Products are in breach of the New Equipment Sales Warranty, and the New Equipment Sales Warranty is not rendered ineffective by ¶ 9, Buyer must promptly notify Metalfrío in writing. If Metalfrío determines that the Products are in breach of the New Equipment Sales Warranty, then Metalfrío will, at its sole discretion, either repair or replace the non-conforming Product at no cost to Buyer. Except as provided in this ¶10, SUCH REPAIR OR REPLACEMENT IS THE ONLY REMEDY OF BUYER FOR ANY BREACH OF THE NEW EQUIPMENT SALES WARRANTY. For service under the New Equipment Sales Warranty, Buyer must contact Metalfrío to obtain a Return Goods Authorization (an "RGA") number and shipping instructions. If Buyer returns Products to Metalfrío without an RGA number, such Products will be held by Metalfrío for twenty (20) days, after which Metalfrío may deem the Products abandoned and dispose of them as it sees fit, without crediting Buyer's account. For Products returned with a valid RGA number, absent any contrary written instructions from the Buyer, such Products will be held by Metalfrío for twenty (20) days after completion of testing and then will be deemed abandoned and disposed of as Metalfrío sees fit, without crediting

Buyer's account. Metalfrío reserves the right to verify any non-conformity of the Products at the module or sub-assembly level. Metalfrío, at its sole discretion, may perform a destructive physical analysis of any non-conforming Product if requested by Buyer, provided the Products are within the eighteen (18) month period of the New Equipment Sales Warranty and upon payment by Buyer of the greater of (a) \$250 per unit, or (b) Metalfrío's actual costs associated with the physical analysis.

11. Liability Limitation

IN NO EVENT IS METALFRÍO RESPONSIBLE TO BUYER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT AND INDIRECT LOSSES (INCLUDING LOST PROFITS AND ANY OTHER FORM OF ECONOMIC LOSS) REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE. THE LIABILITY OF METALFRÍO ARISING OUT OF OR RELATING TO THE PRODUCTS SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY BUYER TO METALFRÍO FOR THE PRODUCTS GIVING RISE TO SUCH DAMAGES.

Metalfrío will not be liable for any inaccuracies of information published by Metalfrío relating to the Products.

12. Termination / Cancellation

In the event of a breach by Buyer, Metalfrío may terminate the Sales Agreement upon giving ten (10) day's written notice of termination. If the Sales Agreement is terminated by Metalfrío because of Buyer's breach, Metalfrío is entitled to reasonable reimbursement for any labor, material or other expenses incurred in connection with the Sales Agreement, plus a reasonable amount for overhead. All cancellations and reschedules by Buyer require a minimum of: forty-five (45) days prior written notice for standard module Products; sixty (60) days prior written notice for standard configurable Products; and ninety (90) day's prior written notice for all other Products, unless otherwise agreed to in writing by Metalfrío. Metalfrío will ship all completed Products scheduled for delivery during such periods unless an exception is negotiated and agreed to in writing by both parties. In the event of any cancellation of a Sales Agreement, Buyer shall pay Metalfrío: (a) the price for any Products manufactured to firm orders; (b) the cost of any work in process; (c) the cost of materials and components ordered with authorization to meet forecast; and (d) a reasonable mark-up on the cost of work in process and the ordered materials and components. If Buyer requires Metalfrío to cancel any authorized orders for materials or components, Buyer shall be responsible for any cancellation costs or restocking charges incurred as a result.

13. Indemnification

To the maximum extent allowed by law, Buyer must defend and indemnify Metalfrío and its employees and agents against all claims, sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Metalfrío may incur or be obligated to pay as a result of: (a) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (b)

any infringements or alleged infringement of the industrial and intellectual property rights of others arising from Non-Standard Specifications (including Buyer's trademarks and brand names) or production of configurable Products and/or custom Products ordered by Buyer; (c) Buyer's violation or alleged violation of any Federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; or (d) Buyer's breach of the Sales Agreement.

14. Product Use

Unless specifically otherwise agreed in writing by Metalfrio, Buyer acknowledges that Products sold by Metalfrio are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure or malfunction of the component could lead to loss of life or catastrophic property damage (each, a "High Risk Activity"). Buyer will indemnify and hold Metalfrio harmless from any loss, cost or damage resulting from Buyer's use of the Products to perform any High Risk Activity.

15. Government Use

If Buyer's Purchase Order is placed under a contract with the United States Government (the "Government"), Metalfrio agrees to comply with those contract provisions and regulations with which, pursuant to law, it must comply and of which Buyer has, at the time of order placement, placed Metalfrio on notice. In no event will United States Government Cost Accounting Standards apply. All rights in technical data owned or licensed by Metalfrio are hereby reserved and deemed restricted or limited. No provision of Buyer's contract with the Government will be binding on Metalfrio except as expressly set forth in this paragraph.

16. Entire Agreement

The Sales Agreement comprises the complete and final agreement between Metalfrio and Buyer, except as specifically set forth in ¶1, and supercedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Metalfrio and Buyer, either written or oral. Any other representations or warranties made by any person, including employees or other agents of Metalfrio, that are inconsistent with the Sales Agreement must be disregarded by Buyer and are not binding upon Metalfrio. If any model or sample were shown to Buyer, such model or sample was used merely to illustrate the general type and quality of goods and not to represent that the Products would necessarily conform to the model or sample.

17. Successors and Assigns

The Sales Agreement binds and inures to the benefit of Buyer and Metalfrio and their respective successors and permitted assigns. The Buyer may not assign any interest in, nor delegate any obligation under the Sales Agreement, without Metalfrio's prior written consent.

18. Choice of Law

a. Governing Law. This Agreement, any related Service Agreement, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) BETWEEN BUYER AND METALFRIO, including their

affiliates, contractors, and agents, and each of their respective employees, directors, and officers arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this Agreement (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), Metalfrio's advertising, or any related purchase (hereinafter each a "**Dispute**") shall be governed by the laws of the State of Texas without regard to its conflicts of law provisions. The terms of this Agreement must be construed in accordance with the Uniform Commercial Code as enacted in the State of Texas in the Texas Business and Commerce Code, as amended. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply and have no force or effect on this Agreement.

b. Venue. The parties agree that any Dispute (as defined in ¶ 18(a.)) shall be brought exclusively in the state courts located in Bexar County or Kendall County, Texas ("State Courts"), or , exclusively in the the United States District Court for the Western District of Texas, San Antonio Division ("Federal Court"). Buyer and Metalfrio agree to submit any Dispute (as defined in ¶ 18(a.)) to the personal jurisdiction of the State Courts and the Federal Court and agree to waive any and all objections to the exercise of personal jurisdiction over the parties by such courts and agree to waive any and all objections to venue in such courts, including objections based on improper venue and inconvenient forum. Without prejudice to any other mode of service, Buyer consents to service of process relating to any such proceedings in the State Courts or the Federal Court by personal or prepaid mailing (air mail if international) in registered or certified form a copy of the process documents to the Buyer at the address set forth in ¶ 22.

c. Bench Trial. The parties agree to waive, to the maximum extent permitted by law, any right to a jury trial with respect to any Dispute (as defined in ¶ 18(a.)).

d. No Class Actions. NEITHER BUYER NOR METALFRIO SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER BUYERS OR CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

e. Limitation Period. NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

f. Dispute Resolution. Buyer and Metalfrio will attempt to resolve any Dispute (as defined in ¶ 18(a.)) through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from the State Courts (as defined in ¶ 18(b.)) or the Federal Court (as defined in ¶ 18(b.)), a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position

with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 30 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity as limited and permitted by this Agreement.

19. Export Controls

With respect to the resale, export or any other disposition of the Products or technical information furnished hereunder, Buyer will comply fully with all export control laws and regulations of the Government. Buyer agrees not to export or re-export either directly or indirectly, any technical data furnished hereunder or the direct product of such technical data to any country which, as set forth in the Export Administration Regulations of the United States Department of Commerce, is prohibited.

20. Waiver

The waiver by Metalfrío of any breach by Buyer of any provision of this Agreement may not be construed to be either a waiver of the provision itself as to subsequent application or a waiver of any other provision of this Agreement.

21. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of this Agreement shall remain in full force and effect.

22. Notices

No notice or other communication under this Agreement is sufficient to affect any rights, remedies or obligations of either party unless the notice or communication is in writing and (as elected by the party giving the notice) is: (a) personally delivered; (b) transmitted by facsimile (with a receipt acknowledgment); (c) transmitted by electronic computer mail; (d) transmitted by a recognized courier service; or (e) mailed (air mail if international) in registered or certified form, to the party to which notice or communication is being given at the following address:

If to Metalfrío:
METALFRIO SOLUTIONS, INC.
Attention: James E. McVey
110 Enterprise Parkway
Boerne, TX 78006

If to Buyer, at its last address designated on the Purchase Orders.

Except as otherwise specified in this Agreement, all notices or communications are deemed to have been duly given: (a) on the date of receipt if delivered personally; (b) on the date of transmission if delivered by facsimile or electronic computer mail; (c) one day after pickup by courier if delivered by courier; or (d) five days after mailing if delivered by the postal service. Either party may change its address by notice to the other party.

23. Construction

The headings of the paragraphs in these Terms are provided for convenience only and may not be considered in the interpretation of this Agreement. The parties agree that the provisions of this Agreement may not be construed in favor of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of this Agreement.

24. Survival

The terms of this Agreement, which by their nature are reasonably intended by the parties to survive its expiration or early termination, shall survive the expiration or termination of the Agreement.

25. Agreement Updates. METALFRIO reserves the right to update this Agreement (including all applicable terms referenced herein) at any time, effective upon posting an updated version to the METALFRIO website at www.metalfrío.com, in the case of (a) the “Reseller Terms and Conditions of Sale”, available at www.metalfrío.com/terms, and/or (b) the “Commercial Terms and Conditions of Sale”, available at www.metalfrío.com/terms. You shall monitor the revision date/version number, and any change to its posted date/version number will be deemed notice to you that the terms have been updated. Your rights and obligations, however, with respect to any particular Products will be as provided in the version of this Agreement executed by you or available to you at the time of your purchase of the Products.

[END OF DOCUMENT]

(REVISED 03/28/2012)

II. Reseller Terms and Conditions of Sale (Applies to all purchases of Products that you intend to resell to others)

These Reseller Terms and Conditions of Sale, including all applicable terms referenced herein, (collectively, this "**Agreement**") apply to your purchase (whether from METALFRIO or from a METALFRIO distributor in the United States or Canada) and resale of (a) any METALFRIO-branded products (each, a "**METALFRIO Product**"), (b) any non-METALFRIO-branded products (each, a "**Third Party Product**") (METALFRIO Products and Third Party Products are collectively referred to herein as "**Products**"), unless you have a separate written agreement with METALFRIO that expressly applies to your purchase and resale of such. This Agreement does not apply to you if you are buying Products for your own internal end-use. "**METALFRIO**" means the direct or indirect affiliate or subsidiary of **METALFRIO**

SOLUTIONS, INC. named on your invoice, order confirmation, or other sales documents. "Reseller", "Buyer", "You", "you" or "your" means the entity that places an order for Products and/ with METALFRIO for purpose of resale to an End-User (defined below).

BY PLACING YOUR ORDER, YOU ACCEPT AND AGREE TO BE BOUND TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. APPOINTMENT.

A. General. Subject to the terms and conditions of this Agreement and your compliance therewith, you may resell certain METALFRIO Products to End-Users. "EndUser" means any entity purchasing or otherwise obtaining Products from you for its own internal end-use and not for reselling, distributing, or sub-licensing to others. You shall not market, resell, or use Products other than as expressly permitted in this Agreement.

You understand and agree that not all Products offered for sale by METALFRIO may be purchased for resale under this Agreement.

B. Restrictions to Appointment. Notwithstanding Section 1.A, and unless and to the extent that you are expressly granted such rights by a separate written agreement with METALFRIO, you shall not market or resell Products (a) to any consumers, resellers, distributors, or third-party sales agents; (b) through retail storefronts or auction-type websites; or (c) to any government (including federal, provincial, state, or local government), healthcare, or education end-users. You shall not market or resell Products to anyone outside the United States or Canada, whichever is the country covered by the METALFRIO entity from which you purchased such Products and Services.

C. Non-Exclusive. This Agreement is not exclusive. METALFRIO may appoint third parties (including those who may compete with you) to sell or market Products to anyone. METALFRIO may sell or market (whether directly or indirectly through a third party) Products at any price METALFRIO chooses without any obligation or liability to you. This Agreement does not guarantee that you will make any sales of Products.

D. Additional Requirements. Your eligibility to resell certain Products may be subject to additional obligations or conditions not outlined in this Agreement, including additional training, specialization requirements, contractual agreements, and other conditions. METALFRIO may require you to meet such additional obligations or conditions prior to your resale of any Products. Such obligations and conditions will be disclosed to you prior to your purchase of Products for resale. You agree to provide METALFRIO with information and reports pertinent to your relationship with METALFRIO as may reasonably be requested by METALFRIO.

2. PRICING and TAX.

A. Pricing. Prices for Products will be as specified on METALFRIO's website

www.metalfrío.com, in a written quote to you for such Products and Services, or as specified in the applicable METALFRIO invoice or Service Agreement (defined below) relating to such Product or Service. Except as otherwise expressly set forth in METALFRIO's quote, METALFRIO's quoted price is valid for thirty (30) days from the date of the quote. Before METALFRIO issues a quote, METALFRIO may require you to provide information concerning the End-User and you agree to provide such information. METALFRIO reserves the right to modify pricing (including quotes) due to shortage of materials or products, increase in costs, pricing or other error, or any event beyond METALFRIO's control, without liability to you. Taxes, shipping and handling charges and any government mandated environmental disposal surcharges are not included in prices for Products and Services, unless expressly indicated at the time of sale.

B. Discounts. If METALFRIO offers you certain discounts off of METALFRIO's standard list price, such discounts do not apply to special product promotions and cannot be combined with other offers. If you breach the provisions of this Agreement or the terms of any offer, METALFRIO may charge or re-debit your account or credit card the full list price for your purchase (in lieu of a discounted or special price included in the offer).

C. Taxes. You are responsible for all applicable taxes, duties, fees and other charges, including sales or use and/or similar taxes, imposed by any federal, state, provincial or local governmental entity on Products provided by METALFRIO under this Agreement, except for taxes based on METALFRIO's net income, gross revenue or employment obligations. If METALFRIO is obligated by applicable law or regulation to collect and remit any taxes or fees relating to the Products, then METALFRIO will add the appropriate amount to your invoices as a separate line item. You may qualify for tax exemptions from time to time in which case METALFRIO requests that you provide to METALFRIO a valid certificate of exemption or other appropriate documentary proof of exemption.

D. Reseller Pricing. You are free to determine and set your resale pricing of Products.

3. PURCHASE ORDERS.

A. Orders. Each order by Buyer must reference METALFRIO's quote (if any), the requested Products, the End-User's name and address, and any other information requested by METALFRIO. If requested by METALFRIO, you shall submit Orders on METALFRIO designated order form(s). All orders and transactions are subject to acceptance or cancellation by METALFRIO, in METALFRIO's sole discretion. Each accepted order will be interpreted as a single agreement, independent of any other orders.

B. Shipping, Title and Risk of Loss. Title to Products (except title to any software or other intellectual property which remains with the applicable licensors) passes from METALFRIO to you upon shipment to you. Loss or damage that occurs during shipping by a carrier selected by METALFRIO is METALFRIO's responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility. Selecting your carrier of

choice may not be available in certain geographic locations. Shipping and delivery dates are provided as estimates only and METALFRIO is not responsible for any early or delayed shipment or delivery. METALFRIO may ship parts of an order separately. You must notify METALFRIO within twenty-one (21) days from the date of your invoice or acknowledgement if you believe any part of your order is missing, wrong, or damaged.

C. Cancellation. Orders by You for any or all of the following: (i) Third Party Products; (ii) Products that have been Discontinued; (iii) Products which have reached the end of their product lifecycle; or, (iv) formerly standard parts that are no longer regularly used in Products, may not be changed or cancelled without METALFRIO's prior written approval.

METALFRIO is not responsible for pricing, typographical, or other errors in any offer or quote, and reserves the right to cancel any order arising from such errors.

In addition, METALFRIO may cancel orders due to shortage of products or materials, increases in the costs of manufacturing, or any event beyond METALFRIO's control.

D. No Return. All sales are final. Neither you nor any of your End-Users may return Products to METALFRIO, except as expressly permitted in Section 5, below, or to the extent that you are expressly granted return rights pursuant to a separate written agreement with METALFRIO.

E. Security Interest. You hereby grant METALFRIO, and METALFRIO hereby retains, a first priority security interest and lien on any and all of your rights, title, and interest in Products, wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products is paid in full, including any late payment fees and costs of collection. You hereby consent and agree that METALFRIO may prepare and file in the appropriate State and government department or agency any UCC - 1 financing statements or related forms for filings under the Uniform Commercial Code adopted by the State for perfecting this security interest in the Products as METALFRIO reasonably deems necessary or appropriate, including the providing of written notice of METALFRIO's security interest to your other creditors.

4. INVOICING AND PAYMENT.

A. Invoices. METALFRIO may invoice parts of an order separately, or may invoice purchases of Products in one invoice. Additional charges will apply if you request customized invoicing, consolidated invoicing, or other special billing arrangement or statements. METALFRIO reserves the right to change the method of delivery of all documentation. You agree that all invoices will be deemed accurate unless you advise METALFRIO in writing of a bona fide, material error within fourteen (14) days from the date of such invoice. In the event you advise METALFRIO of a material error, (a) payment of any amounts corrected or modified by METALFRIO in writing will be due, and you shall pay such amounts, within fourteen (14) days of such correction, and (b) you shall pay all other amounts by the invoice due date. In the event you withhold payment of any invoiced amounts upon an assertion that such amounts are erroneous, and METALFRIO subsequently concludes that such invoiced amounts are accurate, then you shall pay a late payment fee as described in Section 4.C, from the due date, for such

invoiced amounts, until METALFRIO's receipt of those amounts. In no event will you be entitled to offset, defer or deduct any invoiced amounts that METALFRIO determines are not erroneous following the notification process described in this paragraph. If you do not receive an invoice or acknowledgement in the mail or with your Products, information about your purchase may be obtained at www.metalfrío.com or by contacting your METALFRIO sales representative.

B. Payment. Invoices are due and payable within the time period noted on your invoice, or if not noted, then within thirty (30) days measured from the date of the invoice, subject to continuing credit approval by METALFRIO, provided that, such approval may be revoked without notice from METALFRIO. Payment shall be made in the currency as invoiced by METALFRIO. Payment for Products must be made by credit card, automated clearing-house, wire transfer, electronic funds transfer or some other prearranged payment method, unless credit terms have been agreed to by METALFRIO. You shall make payment to METALFRIO for Products to the account indicated by METALFRIO (as may be amended from time to time). Timely payment is of the essence.

C. Late Payment. METALFRIO reserves the right to charge you a late payment fee of 1.5% per month applied against undisputed overdue amounts, or the maximum rate permitted by law, whichever is less. Late payment fees will be recalculated every thirty (30) days thereafter based on your current outstanding balance. In addition, METALFRIO may, without waiving any other rights or remedies to which it may be entitled, take any one or more of the following actions: (a) not accept additional orders from you; (b) suspend or terminate its provision of maintenance, warranty service, technical support, or any other service; and (c) seek collection of all amounts due, including reasonable attorney or legal fees, expenses and costs of collection. METALFRIO will have no liability to you or to any End-User for any such suspension or termination or for any refusal of additional orders.

D. Purchase Order Assignment Limitations. You agree that your assignment of a purchase order to any third-party, including, but not limited to a third-party financing company, is prohibited and constitutes a material breach of this Agreement unless Buyer has obtained prior written approval to the assignment from METALFRIO, and, on condition that any assignment approved by METALFRIO shall be subject to the security interests and liens granted METALFRIO by this Agreement and provided further that in no case will any such approval of an assignment of a purchase order excuse or release you from your duties, obligations and liabilities under this Agreement.

5. END-USER AGREEMENT.

A. METALFRIO Terms and Conditions Applicable to End-Users. You will only resell Products to End-Users who agree to be bound to: (i) METALFRIO's "Commercial Terms and Conditions of Sale" set forth at www.metalfrío.com, or (ii) such other written agreements as METALFRIO may designate; and (iii) in each of cases (i) and (ii), including all terms and conditions incorporated by reference therein; and, (iv) METALFRIO's LIMITED WARRANTY set forth at www.metalfrío.com. Buyer agrees to communicate to the End-User in writing (in

each quote and in Buyer's own agreement with such End-User for the sale of Products (such agreement, the "End-User Agreement")) that the sale by Buyer and purchase of the Products by the End-User are subject to and will be governed by the terms and conditions of the "Commercial Terms and Conditions of Sale" set forth at www.metalfrío.com.

B. METALFRIO as Third-Party Beneficiary. You acknowledge and agree that METALFRIO is a third party beneficiary of the End-User Agreement and may enforce the provisions thereof directly against the End-User or through you, and you shall require the End-User to acknowledge and agree to such in the End-User Agreement. Additionally, you acknowledge and agree that (i) METALFRIO may present or, if requested by METALFRIO, you shall present, the "Commercial Terms and Conditions of Sale" in executable form directly to the End-User for execution, and (ii) METALFRIO is not required to perform any of its duties and obligations under the "Commercial Terms and Conditions of Sale" for the benefit of an End-User unless and until such End-User has agreed to be bound by the "Commercial Terms and Conditions of Sale", as may be determined in each case by METALFRIO in its sole discretion. You shall immediately notify METALFRIO if you become aware of any End-User's violation of any of the "Commercial Terms and Conditions of Sale". METALFRIO reserves the right, in its sole discretion, to suspend or terminate performance under the "Commercial Terms and Conditions of Sale" in response to such End-User's violation, or suspected violation, of the "Commercial Terms and Conditions of Sale", and METALFRIO will have no liability to you as a result of any such suspension or termination.

6. WARRANTY.

A. Limited Warranty on METALFRIO Products and Services.

METALFRIO MAKES NO WARRANTIES EXCEPT THOSE EXPRESSLY PROVIDED AND STATED IN THE MANNER AS FOLLOWS:

(a.) WITH RESPECT TO METALFRIO PRODUCTS: METALFRIO'S APPLICABLE LIMITED WARRANTY STATEMENT IN EFFECT ON THE DATE OF THE INVOICE, PACKING SLIP, OR ACKNOWLEDGEMENT FOUND AT THE FOLLOWING WEB ADDRESS: WWW.METALFRIO.COM.br/upload/usa/en/service/warranty/WARRANTY_ENGLISH.pdf.

(b.) WITH RESPECT TO SERVICES: AS PROVIDED, IF AT ALL, IN THE APPLICABLE SERVICE AGREEMENT.

You shall not make any warranty on METALFRIO's behalf. You are solely responsible for, and you shall indemnify and hold METALFRIO harmless from any claims related to any warranty you grant that is beyond the METALFRIO limited warranty provided in this paragraph.

B. Third Party Products. Third Party Products may carry with them a limited warranty from the third-party provider or original manufacturer of such Third Party Products.

METALFRIO is not responsible for fulfillment of any Third Party Product warranty or for problems attributable to the use of Third Party Products. METALFRIO does not warrant that any Product will function in any specific configuration that includes any Third Party Products, or that any Product will function to produce a particular result, even if the specific configuration or the result has been discussed with METALFRIO.

ALL THIRD PARTY PRODUCTS ARE PROVIDED BY METALFRIO ON AN "AS IS" BASIS.

C. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.A, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, METALFRIO (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SUCCESSORS AND ASSIGNS), ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS (COLLECTIVELY AND TOGETHER WITH METALFRIO, THE "METALFRIO PARTIES"), DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

D. Product Support Services. You shall transfer all Products with all original records with the Product serial number and along with the factory identification label attached to the Product to the End-User that is associated with the METALFRIO Products you have purchased for resale in accordance with this Agreement. The process to complete such transfer may be found at www.metalfrio.com., which process METALFRIO may change from time to time. It is your responsibility to ensure compliance with the latest version of the posted process. You acknowledge that your failure to properly transfer the Product serial number along with the factory identification label of the METALFRIO Product to the End-User will result in the End-User's inability to receive Warranty support services from METALFRIO for such METALFRIO Products, and METALFRIO will not be liable to you or to any End-User for any such failure. The parts used in repairing or servicing Products and spare parts may be new, equivalent-to-new, or reconditioned.

7. HIGH RISK APPLICATIONS.

You understand that METALFRIO Products have been designed, manufactured, and tested by METALFRIO or its suppliers for use in general retail/mercantile business use environments. METALFRIO has not tested or certified METALFRIO Products for use in any high-risk applications, including the operation of nuclear facilities, aircraft navigation, air traffic control, emergency communications systems, life support machines, weapons systems, or any other application where the failure or malfunction of any METALFRIO Products can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm ("**High Risk Applications**"). The Products are not fault-tolerant and are not designed or intended for use in, and you shall not use any Products in, any hazardous environments requiring

fail-safe performance or in any High Risk Applications. You understand and agree that METALFRIO makes no warranties or assurances that the Products are suitable for any High Risk Applications and you shall defend and indemnify METALFRIO from any claims made by third parties resulting from any such High Risk Applications. As between you and METALFRIO, you are responsible for the design and implementation of configurations, systems, networks, suitable for the risks involved in the End-User applications and operating environments into which you sell.

8. INTELLECTUAL PROPERTY.

A. Trademarks and Copyrights. You may use the "METALFRIO" name and the names of METALFRIO Products (collectively, "Names") solely for the purpose of accurately identifying the METALFRIO Products you market or sell under this Agreement. You shall not use any of the Names for any other purpose, and shall not use any other METALFRIO trademarks, service marks, or copyrighted works, unless and to the extent you are expressly granted such usage right in writing by METALFRIO. You are prohibited from using METALFRIO's logos, referring to yourself as an authorized reseller of METALFRIO, or creating the impression that METALFRIO is affiliated with you. You shall not claim or imply that you and METALFRIO are legal partners or that METALFRIO has sponsored, authorized, approved, or endorsed your business or any offer or marketing, advertising, or promotion thereof in any manner. You will clearly and prominently identify yourself in all your offers and advertising, marketing, and promotional materials. You may not register or use any domain name or business name containing or confusingly similar to any name or mark of METALFRIO's. Additionally, you may not use any Names or METALFRIO marks in search engine advertising, either as a keyword or in advertisements appearing on search engines, without METALFRIO's prior written permission.

B. Intellectual Property Ownership and Reservation of Rights. All right, title and interest in and to the intellectual property rights in METALFRIO Products, including technology and trade secrets embodied therein and any customer developments created or provided in connection with or related to this Agreement, and any derivative works thereof, belong solely and exclusively to METALFRIO or its licensors or suppliers, and you have no rights whatsoever in any of the foregoing other than the rights expressly set forth in this Agreement. Nothing in this Agreement or otherwise will be deemed to grant to you an ownership interest in any of the intellectual property rights in or to any METALFRIO Products or Services, in whole or in part.

C. Discontinued or Changed Products or Services; Service Parts. METALFRIO reserves the right to revise or discontinue any Product or Service offering at any time without notice to you or the End-User. Changes to METALFRIO Products may occur after you place an order but before METALFRIO ships the METALFRIO Product, before METALFRIO performs the Services, or before the end of the Service subscription. As a result, any METALFRIO Products that you or an End-User receive might display minor differences from the METALFRIO Products ordered, but METALFRIO Products will meet or exceed all material specifications of such METALFRIO Product that were ordered.

D. Confidential Information. The term "METALFRIO Confidential Information" means any confidential or proprietary information pertaining to or provided by METALFRIO, including, without limitation, product plans, software, pricing, marketing and sales information, business plans, customer and supplier data, financial and technical information, "know-how," trade secrets, and other information, whether such information is in written, oral, electronic, web-based, or other form. You will keep all METALFRIO Confidential Information confidential for a period of three years from the date of METALFRIO's disclosure to you, and use at least the same degree of care as you use to protect your own confidential information but no less than reasonable care. Notwithstanding anything to the contrary in this Agreement, your confidentiality obligations with respect to customers' personally-identifiable information and METALFRIO trade secrets shall never expire. You may not disclose METALFRIO Confidential Information to any third party without METALFRIO's prior written consent. You may share METALFRIO Confidential Information with only your employees who have a need to know and who are subject to legally binding obligations of confidentiality no less restrictive than those imposed by this Agreement. These confidentiality obligations do not apply to any METALFRIO Confidential Information that (a) you can demonstrate was in your possession before receipt from METALFRIO; (b) is or becomes publicly available through no fault by you; or (c) you rightfully received from a third party without a duty of confidentiality. If you are required by a government body or court of law to disclose any METALFRIO Confidential Information, you agree to give METALFRIO reasonable advance notice so that METALFRIO may contest the disclosure or seek a protective order. You may use the METALFRIO Confidential Information solely for the purpose of, and in connection with, your business relationship with METALFRIO. No license or conveyance of any rights under any patent, copyright, trade secret, trademark or any other intellectual property right to METALFRIO Confidential Information is granted under this Agreement except the limited rights to use the METALFRIO Confidential Information as expressly set forth in this paragraph. METALFRIO makes no warranties as to the accuracy or completeness of the METALFRIO Confidential Information.

ALL METALFRIO CONFIDENTIAL INFORMATION IS PROVIDED "AS IS".

To the extent permitted by law, METALFRIO disclaims all express, implied and statutory warranties and conditions, and assumes no liability to you for any damages of any kind in connection with the METALFRIO Confidential Information or any intellectual property in them. Upon METALFRIO's written request, you will promptly return all METALFRIO Confidential Information, together with all copies, or certify in writing that all such METALFRIO Confidential Information and copies thereof have been destroyed. You acknowledge that damages for improper disclosure of METALFRIO Confidential Information may be irreparable and that METALFRIO shall be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity. You agree to adhere to all applicable United States, Canadian and foreign export control laws and regulations and will not export or re-export any technical data or products, to any proscribed country listed in the U.S. Export Administration regulations, or foreign national thereof, unless properly authorized by the U.S. Government.

9. YOUR RESPONSIBILITIES.

In addition to your other obligations set forth in this Agreement, you are responsible for the following:

A. End-User Documentation. You will provide each End-User with appropriate Product warranty statements, registration cards and other materials that METALFRIO includes with its shipments of Products to you. In addition, you are responsible for providing all similar information related to your addition or modification to the Products.

B. Business Conduct. At all times you shall conduct business in a manner which reflects favorably on the Products, and goodwill and reputation of METALFRIO. In your marketing and sales of Products, you will use best efforts to conduct your business in an ethical manner and to avoid any business practices that may be perceived as deceptive, misleading, or otherwise improper. You shall not make any false or misleading statement concerning METALFRIO or any Products in any of your advertising, marketing or promotional materials or in any content. Furthermore, you shall not make any representations, warranties, or guarantees with respect to the specifications, features or capabilities of METALFRIO Products that are inconsistent with or absent from METALFRIO's published product specifications at www.metalfrío.com. You shall comply with all laws and regulations applicable to your activities in connection with this Agreement, including your marketing and resale of Products. You shall comply with the anti-bribery and anti-corruption laws of the countries in which you operate, including the U.S. Foreign Corrupt Practices Act and the Canadian Corruption of Foreign Public Officials Act of 1999. You shall not (a) offer, promise or give any item of value to any individual for an improper purpose or with a corrupt intent to obtain or retain business or any other improper business advantage; (b) request, receive or accept any item of value offered with a corrupt intent; (c) engage any third party to represent you in the sale of METALFRIO Products if there is any concern that the third party may engage in bribery; nor (d) offer, promise or give a facilitation payment of any kind in relation to the sale, delivery or performance of METALFRIO Products, regardless of whether such payments are permitted by law or are common and expected under local custom.

C. Insurance. You will obtain and maintain comprehensive general liability, including products liability, insurance in an amount appropriate for your business, but in no event less than \$1,000,000.00 (US), with an insurance company having a Best rating of A or better. You will name METALFRIO as an additional insured on all commercial general liability insurance policies procured in accordance with this paragraph. Upon request, you will provide to METALFRIO a certificate of the above-mentioned insurance, including any new or amended certificates of insurance.

10. INDEMNIFICATION.

A. IP Indemnity. METALFRIO shall defend and indemnify you against any third-party

claim or action (provided that such third party is not affiliated with you) that the METALFRIO Products prepared or produced by METALFRIO and delivered pursuant to this Agreement infringe or misappropriate that third party's U.S. or Canadian patent, copyright, trade secret, or other U.S. or Canadian intellectual property rights (collectively, "Indemnified Claims"). In addition, if METALFRIO receives prompt notice of an Indemnified Claim that, in METALFRIO's reasonable opinion, is likely to result in an adverse ruling, then METALFRIO shall, at its option and expense: (a) obtain a right for End-User to continue using such METALFRIO; (b) modify such METALFRIO Products to make them non-infringing; (c) replace such METALFRIO Product with a substantially comparable, non-infringing product; or (d) provide a reasonable depreciated or pro rata refund for the allegedly infringing METALFRIO Product. Notwithstanding the foregoing, METALFRIO shall have no responsibility for, and no obligation to defend or indemnify you for, any claim resulting or arising from (1) any Third Party Products; (2) modifications of the METALFRIO Products; (3) the combination, operation, or use of any of the METALFRIO Products with any Third Party Product (where such combination, operation or use causes the claimed infringement); (4) METALFRIO's compliance with any of your written specifications or directions, including the incorporation of any materials, processes, or Third Party Products provided by or requested by you; or (5) any circumstance for which you are required to indemnify any METALFRIO Party. METALFRIO's duty to indemnify and defend under this paragraph is contingent upon: (i) METALFRIO receiving prompt written notice of the third party claim or action for which METALFRIO must indemnify you, (ii) METALFRIO having the right to solely control the defense and resolution of such claim or action, and (iii) your cooperation with METALFRIO in defending and resolving such claim or action. METALFRIO has no obligation to defend or indemnify any End-User or any other third party. This paragraph states your exclusive remedies, and METALFRIO's sole liability, for any third-party intellectual property claim or action, and nothing in this Agreement or elsewhere will obligate METALFRIO to provide any greater indemnity to you.

B. Your Indemnity to METALFRIO. You shall defend and indemnify the METALFRIO Parties against any third-party claim or action resulting from or relating to (a) your failure to obtain or maintain any appropriate license, intellectual property rights, or other permissions, regulatory certifications or approvals associated with any product, software, data or other materials you provide, request or direct to be installed or integrated as part of the Products; (b) your misuse or modification of any Products; (c) your combination, operation, or use of any of the Products with any Third Party Product, where such combination, operation or use infringes or misappropriates any intellectual property right or trade secret of a third party; (d) your fraud, misrepresentation, gross negligence, willful misconduct, or breach of any provision of this Agreement; or (e) the provision of your own products or services.

11. LIMITATION OF LIABILITY.

A. METALFRIO WILL NOT BE LIABLE FOR (A) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, (B) LOSS OF REVENUE, INCOME, PROFIT, SAVINGS OR BUSINESS OPPORTUNITY, (C) BUSINESS INTERRUPTION OR DOWNTIME, (D) LOST OR

CORRUPTED DATA OR SOFTWARE, OR (E) LOSS OF USE OF ANY PRODUCTS OR SERVICES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ON METALFRIO'S WEB SITE TO THE CONTRARY, METALFRIO IS NOT RESPONSIBLE FOR INFORMATION OR DATA YOU PROVIDE TO US UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT TO THE CONTRARY. METALFRIO DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH IN THIS AGREEMENT.

- B.** METALFRIO'S TOTAL LIABILITY FOR A NY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY PRODUCTS SHALL NOT EXCEED (A) IN THE CASE OF PRODUCTS, THE AGGREGATE DOLLAR AMOUNT YOU PAID TO METALFRIO UNDER THIS AGREEMENT FOR SUCH PRODUCTS THAT CAUSED THE LIABILITY OR (B) IN THE CASE OF SERVICES, THE AGGREGATE DOLLAR AMOUNT YOU PAID TO METALFRIO UNDER THIS AGREEMENT FOR SUCH SERVICES THAT CAUSED THE LIABILITY IN THE PREVIOUS TWELVE (12) MONTHS PRIOR TO SUCH CLAIM FOR LIABILITY.

The existence of more than one claim will not increase or otherwise alter these limitations on METALFRIO's liability.

- C.** THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES OR LIABILITY, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. YOU AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR METALFRIO'S SALE OF PRODUCTS TO YOU, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF METALFRIO HAS BEEN ADVISED OF, KNEW OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LIABILITIES.

12. EXPORT.

If any Products are resold in violation of the restrictions in this Section 12, METALFRIO is not obligated to provide any warranty service or technical support. Nothing in this Section 12 shall be construed as authorization by METALFRIO for you to market or resell Products in violation of Section 1.B of this Agreement.

A. You acknowledge that the Products provided under this Agreement may be subject to the customs and export control laws and regulations of the United States, and may also be subject to the customs or export control laws and regulations of the country(ies) in which the Products are purchased, provided, manufactured, incorporated, transferred, used or received. You agree to abide by those laws and regulations, including any requirements to obtain export

licenses or other government authorizations. The Products may not be exported, re-exported, sold, leased or otherwise transferred to restricted end-users (including those on the U.S. Department of Commerce, Bureau of Industry and Security "Entity List," the U. S. Department of the Treasury, Office of Foreign Assets Control "Specially Designated Nationals List," and other U.S. government lists of denied parties) or to countries subject to a U.S. export embargo (currently Cuba, Iran, North Korea, Sudan, and Syria). In addition, the Products may not be exported, re-exported, sold, leased or otherwise transferred to, or utilized by, an end-user engaged in any activities related to weapons of mass destruction, including any activities related to the design, development, production or use of (a) nuclear weapons, materials, or facilities, (b) missiles or the support of missile projects, or (c) chemical or biological weapons. You agree to apply the requirements of this Section 12 to any agreement you enter with any party for the resale or distribution of the Products provided under this Agreement.

B. You are solely responsible for obtaining any necessary licenses or other authorizations relating to the export of the Products provided under this Agreement, and you are responsible for ensuring compliance with the requirements of any such licenses or other authorizations. METALFRIO's acceptance of any order for any Products is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government; METALFRIO is not liable for delays or failure to deliver any Products resulting from your failure to obtain such license or to provide certification to METALFRIO that any necessary license has been obtained.

C. You shall indemnify, defend, and hold METALFRIO harmless from any claims, causes of action, or legal proceedings (including any investigations or proceedings by a governmental agency or entity) arising out of or in connection with your inaccurate representation regarding the existence of an export license or your violation or alleged violation of any applicable customs or export control laws or regulations. If an End-User exports or acquires Products for export, you will use commercially reasonable efforts to ensure that the End-User complies with all applicable customs and export control laws and regulations. If any METALFRIO-branded hardware Product is moved outside of the United States or Canada to a geographic location in which such Product's warranty support service contract ("**Warranty Support Service**") is not available, or is not available at the same price as you paid to METALFRIO for the Warranty Support Service, the End-User may not have coverage or may incur an additional charge to maintain the same categories of support coverage at the new location. If you or the End-User choose not to pay such additional charges, in METALFRIO's sole discretion the Warranty Support Service may be automatically changed to categories of support which are available at such price or a lesser price in such new location with no refund available. You shall inform all End-Users of the foregoing limitations prior to or at the time an End-User places its order with you for any Warranty Support Services for any METALFRIO-branded hardware Products.

13. DISPUTE RESOLUTION - ARBITRATION.

YOU AND METALFRIO ARE AGREEING TO GIVE UP ANY RIGHTS TO

LITIGATE CLAIMS IN A COURT OR, WHERE APPLICABLE, TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM.

OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

A. The parties will attempt to resolve any claim, dispute, or controversy (whether in contract, tort or otherwise, whether pre-existing, present or future, and including statutory, consumer protection, common law, intentional tort and equitable claims) between you and METALFRIO Parties arising from or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from such written agreements (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this Agreement), METALFRIO's advertising, or any related purchase (each a "**Dispute**") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator.

B. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION administered by the International Institute for Conflict Prevention and Resolution (CPR), the American Arbitration Association (AAA), or JAMS. Arbitration proceedings shall be governed by this Dispute Resolution – Arbitration section and the applicable procedures of the selected arbitration administrator in effect at the time the claim is filed. The arbitration will be limited solely to the individual dispute or controversy between you and METALFRIO.

C. You agree to arbitration on an individual basis. Where enforceable, NEITHER YOU NOR METALFRIO SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER RESELLERS OR PARTNERS, OR ARBITRATE ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER, OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced (but in no case shall there be a class arbitration).

D. The arbitration hearing shall take place in San Antonio, Bexar County, Texas, and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. The arbitrator shall base its award on the terms of this Agreement and any other written Agreement(s) between the parties, and will follow the law and judicial precedents that a United States District Judge sitting in the United States District Court for the Western District of Texas, San Antonio Division would apply to the Dispute. With respect to Canadian entities: the arbitration hearing shall take place in Toronto, Ontario, and will be governed by the Arbitration Act of Ontario and the applicable laws of Canada and the Province of Ontario. The arbitrator shall render its award in writing and will include the findings of fact

and conclusions of law upon which the award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. For information on CPR, call (212) 949-6490; on AAA, call (800) 778-7879; on JAMS, call (800) 352-5267.

E. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction sitting in San Antonio, Bexar County, Texas, whether state or federal, a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this Dispute Resolution - Arbitration section.

14. GOVERNING LAW.

You agree that this Agreement, any sale and purchase hereunder and any Dispute will be governed by the laws of the State of Texas (or for Canadian entities, the Province of Ontario), without regard to its conflict-of-laws rules or to the United Nations Convention on Contracts for the International Sale of Goods.

15. MISCELLANEOUS.

A. Headings, Interpretation and Language. The section headings used herein are for convenience and reference only and are not to be considered in construing or interpreting this Agreement. All references herein to "Sections" will be deemed references to sections of this Agreement. The words "include" and "including", and other variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation".

B. Independent Contractors. No provision of this Agreement will be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between you and METALFRIO, or impose a trust, partnership, or fiduciary duty, obligation, or liability on or with respect to such entities. You and METALFRIO are independent contractors. Neither party will make any representations or warranties, or assume any obligations, on the other party's behalf. Neither party is or will claim to be a legal representative, franchisee, agent or employee of the other party. Each party is responsible for the direction and compensation, and is liable for the actions, of its employees and subcontractors.

C. Audit. You agree that you will maintain accurate and legible records for a period of three (3) years and you hereby grant to METALFRIO, or its designee, reasonable access to and copies of, any information reasonably requested by METALFRIO to verify compliance with the terms of this Agreement.

D. No Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing in this Agreement is intended to, or will be deemed or construed to, create any rights or remedies in any third party.

E. Limitation Period. Neither party may institute any action in any form arising out of this Agreement more than two (2) years after the cause of action has arisen, or in the case of non-payment, more than two (2) years from the date of last payment.

F. Assignment; Subcontracting. You shall not assign this Agreement in whole or in part, whether by operation of law, merger or stock or asset sale, or otherwise, without the prior written consent of METALFRIO. Any attempt to assign this Agreement without METALFRIO's written consent will render the purported assignment null and void. METALFRIO has the right to assign, subcontract or delegate in whole or in part this Agreement, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, provided that METALFRIO will remain responsible for the performance of Services under this Agreement.

G. Force Majeure. METALFRIO shall not be liable to you for any delays or failure to perform any of its obligations under this Agreement during any period in which such performance is delayed or prevented by circumstances beyond its reasonable control including fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.

H. Waiver. Failure by METALFRIO to enforce any provision of this Agreement will not operate or be construed as a waiver of any future enforcement of that or any other provision of this Agreement. No waiver will be effective against METALFRIO unless in writing and signed by an authorized representative of METALFRIO.

I. Severability. If any provision of this Agreement is declared or found to be illegal, invalid or unenforceable, then such provision will be stricken or modified to the extent necessary to make it legal, valid, and enforceable while preserving the parties' original intent to the maximum extent possible. The remaining provisions of this Agreement will remain in full force and will not be terminated.

J. Entire Agreement. This Agreement (including all online terms referenced herein) constitutes the entire integrated agreement between you and METALFRIO regarding its subject matter, and supersedes all prior or contemporaneous, written or oral understandings, communications or agreements between you and METALFRIO regarding such subject matter. This Agreement may not be altered, supplemented or amended by you via the use of any other document(s) unless otherwise agreed to in a separate written agreement signed by an authorized representative of METALFRIO.

ANY USE OF YOUR PRE-PRINTED FORMS, SUCH AS PURCHASE ORDERS, ARE FOR CONVENIENCE ONLY, AND ANY PRE-PRINTED TERMS SET FORTH THEREIN THAT ARE IN ADDITION TO, INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THIS AGREEMENT SHALL BE GIVEN NO FORCE OR EFFECT.

K. Agreement Updates. METALFRIO reserves the right to update this Agreement (including all applicable terms referenced herein) at any time, effective upon posting an updated version to the METALFRIO website at www.metalfrío.com, in the case of (a) the "Reseller

Terms and Conditions of Sale”, available at www.metalfrío.com/terms, and/or (b) the “Commercial Terms and Conditions of Sale”, available at www.metalfrío.com/terms. You shall monitor the revision date/version number, and any change to its posted date/version number will be deemed notice to you that the terms have been updated. However, subject to Section 8.C, your rights and obligations with respect to any particular Products will be as provided in the version of this Agreement executed by you or available to you at the time of your purchase of the Products.

L. Notices. Any notice to METALFRIO relating to this Agreement must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (including facsimile or e-mail) as specified by METALFRIO in writing, and will be effective upon receipt. Notice from METALFRIO may be sent to you by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address and contact information provided by you to METALFRIO in connection with this Agreement.

METALFRIO SOLUTIONS, INC.
Attention: James E. McVey
110 Enterprise Parkway
Boerne, TX 78006

[END OF DOCUMENT]

(REVISED 03/28/2012)
