Backer Hotwatt, Inc. is herein referred to as the “Seller” and the customer or person or entity purchasing goods ("Goods") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale of the Goods and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of agreement governing the sale of Goods by Seller to Buyer. Seller’s acceptance of Buyer’s purchase order is expressly conditional on Buyer’s assent to all of Seller’s terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer’s purchase order. Buyer’s acceptance of or payment for the Goods will manifest Buyer’s assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

1. PRICES: Prices for Goods, whether specified in Seller’s price list or schedule, acknowledgment or written quotation, are subject to change without notice. Such prices shall be adjusted to reflect Seller’s prices for Goods as in effect at the time of requested shipment date, and each shipment will be invoiced at such prices. All prices are exclusive of taxes, transportation and insurance, which are to be borne by Buyer.

2. TAXES: Any current or future tax or governmental charge (or increase in same) affecting Seller’s costs of production, sale, delivery, installation, or services rendered in connection with the Goods shall be charged to Buyer. No taxes, duties or other governmental charges, levies, imposts, or assessments, costs and expenses of storage, processing, use or consumption of Goods, shall be for Buyer’s account and shall be added to the price billed to Buyer separately, at Seller’s election.

3. TERMS OF PAYMENT: Unless otherwise specified by Seller, terms are thirty (30) days from date of Seller’s invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this agreement and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorney’s fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum permitted rate by law, from the date on which it is due until it is paid. Buyer’s failure or refusal to maintain notification become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods therefore delivered. If such cash payment or security is not provided, in addition to Seller’s other rights and remedies, Seller may discontinue deliveries. Buyer hereby waives any rights it has to inspect the Goods for Seller’s continued compliance with Buyer’s security interest in all Goods sold to Buyer by Seller, which security interest in Goods shall continue in full force and effect until full payment is made. Prices are fully paid for in cash, and Buyer, upon Seller’s demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

4. SHIPMENT AND DELIVERY: While Seller will use all reasonable commercial efforts to maintain the delivery dates and times acknowledged or quoted by Seller, Buyer is advised to make no commitments or contracts for which Seller’s failure to deliver on time or to fulfill obligations may not be excused, arising by the terms of partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees that Buyer shall pay all storage, warehouse, handling, and other expenses. This title and loss and legal title to the Goods shall transfer to Buyer for sales in which the end destination of the Goods is outside of the United States immediately after the Goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title to the Goods shall pass from Seller to Buyer upon delivery to and receipt by Buyer at Seller’s shipping point. All shipments are F.O.B. Seller’s shipping point. Any claims for shortages or damages suffered in transit or otherwise shall not be asserted by Buyer unless submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

5. LIMITED WARRANTY: Subject to the limitations of Section 6, Seller warrants that the Goods manufactured by Seller will be free from defects in material and workmanship and meet Seller’s published specifications at the time of shipment under normal use and regular service and maintenance for a period of one year from the date of shipment of the Goods by Seller, unless otherwise specified in writing by Seller. Products purchased by Seller from a third party for resale to Buyer ("Revised Product") shall carry only the warranty extended by the original manufacturer. The WARRANTY SET FORTH IN THIS SECTION AND THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH REGARD TO GOODS ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH REGARD TO GOODS. UNDER NO CIRCUMSTANCES, INCLUDING WITHOUT LIMITATION, OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, INCLUDING WITHOUT LIMITATION, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER’S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER’S USE OR PURPOSE.

6. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HERELINE (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT OF THE NON-CONFORMING GOODS, OR CANCELLATION OF THE PURCHASE PRICE UNDER SECTION S.

7. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR breach OF ANY WARRANTY HERELINE (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 7) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT OF THE NON-CONFORMING GOODS, OR CANCELLATION OF THE PURCHASE PRICE UNDER SECTION S.

8. EXCUSE OF PERFORMANCE: Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer, war, fire, flood, weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requisitions, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseeable circumstances or any events or causes beyond Seller’s reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing. Seller reserves the right to adjust prices or invoice at such time as the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

9. ASSIGNMENT: Buyer shall not assign, whether by operation of law or otherwise, or any rights or benefits arising under this agreement to any third party, without Seller’s prior written consent. Buyer’s assignment of this agreement shall not affect Seller’s rights or obligations hereunder. Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, costs, damages, losses, suits, actions, and expenses that may arise out of or in any way relate to Buyer’s breach of this agreement. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, obsolescence (other than Seller’s, unaccounted modification or alteration, use beyond rated capacity, unsuitable power supplies, power failure, failure of any system or apparatus to which the Goods are connected, including without limitation, drawing or otherwise, and whether or not Seller’s products are specifically designed and/or manufactured by Seller for Buyer’s use or purpose.

10. DISPUTES: Any current or future tax or governmental charge (or increase in same) affecting Seller’s costs of production, sale, delivery, installation, or services rendered in connection with the Goods shall be charged to Buyer. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees that Buyer shall pay all storage, warehouse, handling, and other expenses. This title and loss and legal title to the Goods shall transfer to Buyer for sales in which the end destination of the Goods is outside of the United States immediately after the Goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss and legal title to the Goods shall pass from Seller to Buyer upon delivery to and receipt by Buyer at Seller’s shipping point. All shipments are F.O.B. Seller’s shipping point. Any claims for shortages or damages suffered in transit or otherwise shall not be asserted by Buyer unless submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

11. ASSIGNMENT: Buyer shall not assign its rights or delegate its duties hereunder or any interest hereunder without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

12. QUANTITY: Buyer agrees to accept overruns of up to ten percent (10%) of the order on “made-to-order” goods, including parts. Any such additional items shall be priced at the price per item charged for the specific quantity ordered.

13. REPLACEMENT / SERVICE GOODS: Upon the cancellation or fulfillment of this order, Seller will have no obligation to sell and Buyer will have no obligation to purchase the Goods sold hereunder, including, but not limited to, the supply of replacement parts for Goods or Buyer’s consumer service division. Seller is not obligated to sell Buyer or its consumer service division Goods; (i) for any pre-established time of product production of the Goods supplied hereunder or after the last date of shipment made under this order: or (ii) at any pre-established price to fulfill Buyer’s or its consumer service divisions requirements during or after production of the Goods ceases or after the last date of shipment under this order. Seller shall have the absolute right to revise the price of Goods and the terms of sale and to modify or discontinue the sale of the Goods, and such action shall not form the basis of any claim by Buyer against Seller.

14. TOOLING: Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be the property of Seller. Charges for tools, dies, patterns and tooling, including tooling, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as expressly provided by Seller and Buyer in writing with reference to this provision.

15. INSPECTION/TESTING: Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods for compliance with Seller’s standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller’s plant at such reasonable time as is specified by Seller. Any rejection of the Goods must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods meet Seller’s criteria for such procedures.

16. DRAWINGS: Seller’s prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer are the property of Seller. Buyer is not authorized to sell, lease, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.

17. GENERAL PROVISIONS: These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, revocation, discharge, abatement, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Buyer’s receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms with variation or in addition to those set forth herein. Any modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer’s assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default of or any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressly written in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, estimate, acknowledgment, order or invoice shall be deemed corrected by Buyer’s acceptance thereof.

18. The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be determined by the law of the state of Delaware without regard to its conflicts of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Delaware and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions related to this contract, may be brought by either party more than one year after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.