1. AGREEMENT. These terms and conditions and the document to which they are attached constitute the “Agreement” under which VAC Magnetics LLC (“VAC”) sells its products (“Products”) and services (“Services”) to a purchaser (“Buyer”). In the event there is a written agreement signed by both parties that conflicts with the terms and conditions set forth herein, the terms of the written agreement shall control. By placing an order with VAC, Buyer agrees to these terms and conditions. VAC hereby notifies Buyer in advance that VAC objects to any terms and conditions in Buyer’s purchase order or other document which are additional to or different than these terms and conditions, whether or not such additional or different terms would materially alter this Agreement, and that such additional or different terms are specifically agreed to in writing by a duly authorized signing officer of VAC.

2. DELIVERIES. VAC shall use reasonable efforts to meet delivery and performance dates, but any such dates shall be estimates only and VAC shall not be liable for failure to do so. VAC reserves the right to make early or partial shipments and invoice Buyer accordingly.

3. CHANGES. Buyer may not modify, cancel or otherwise alter orders after the order is in process without VAC’s written consent. VAC reserves the right to charge Buyer and Buyer hereby agrees to pay VAC, a 20% surcharge (calculated as 20% of the order price) for any approved modifications, changes or alterations to any orders after the order process is in process. Any such cancellation, modification or alteration shall be subject to additional conditions as may be imposed by VAC at such time, including reimbursing VAC for any costs, expenses and losses relating to such change.

4. PAYMENT. Unless different terms are agreed to in writing, Buyer shall pay all invoiced amounts due to VAC within 30 days from the date of VAC’s invoice. Buyer shall make all payments hereunder by bank wire transfer or check and in US dollars. VAC shall issue invoices with shipment of Products or performance of Services. Any amounts unpaid after the due date shall accrue interest at a rate equal to the maximum interest rate and most beneficial time periods allowable by law. If Buyer fails to make full payment for any Products or Services, VAC shall have all rights to other remedies, to either: (a) suspend or cancel future deliveries; or (b) require cash payment on or before shipment/delivery. Should Buyer’s financial viability become unsatisfactory to VAC, cash payment or satisfactory security may be required by VAC before proceeding with further Product deliveries or Service performances. Buyer agrees to furnish VAC with credit verification at request. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with VAC, whether relating to VAC’s breach, bankruptcy or otherwise.

5. PRICE. Unless VAC otherwise states in writing, the price for the Products shall be determined on the date of shipment, as most VAC Products contain metal components that are purchased on the open market. VAC price quotations for Products and/or Services are valid for the time period specified by VAC in the quote. All prices are subject to change by VAC at any time. Prices do not include taxes and in some cases may not reflect metal surcharges.

6. TAXES. Buyer shall reimburse VAC for all taxes, excise or other charges that VAC may be required to pay to any governmental entity or collect for any governmental entity upon the production, sale, transportation, delivery or use of the Products and Services sold hereunder.

7. SHIPMENT. VAC will ship Products DDP Chicago Airport (Incoterms 2010) unless different terms are agreed to in writing. Title to Products transfers to Buyer upon payment in full. If any Products are rejected by Buyer before Buyer pays for Products in full, Buyer hereby grants to VAC a lien on and security interest in such Products and shall not remove them from VAC’s premises until payment in full has been received by VAC.

8. ACCEPTANCE. Buyer shall inspect the Product for compliance with the order and VAC specifications immediately upon receipt of Product. Failure of Buyer to give written notice of non-acceptance to the carrier and VAC immediately upon receipt shall constitute final acceptance of the Product.

9. NO LICENSE. The sale of any Product or Service hereunder does not transfer to Buyer any right or license under any patent, trademark or other intellectual property right with respect to any such Product or Service. VAC retains ownership of all intellectual property rights to the Products and Services sold hereunder.

10. WARRANTIES. VAC warrants that the Products sold hereunder to Buyer at the time of delivery shall: (a) conform to VAC’s standard written specifications for such Products; and (b) be adequately contained, packaged and labeled and shall conform to the affirmations of fact stated thereon. VAC warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional, workmanlike manner. VAC shall perform the Services in accordance with industrial standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. VAC does not warrant that the use of the Products, Services, or any other function, process, method, or software, alone or in conjunction with other material, will not infringe any third party intellectual property right. Determination of the suitability of the Products or Services for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer. Any suggestions or recommendations made by VAC concerning uses or applications of the Products or Services are provided without charge, but Buyer agrees to conduct due diligence in order to determine the suitability of the Products or Services for Buyer and others. Buyer and others are beyond VAC’s control. VAC is not liable for warranty claims caused by the following: 1) negligence of Buyer or third party; 2) alteration or misuse of the Product or Services by Buyer; 3) unauthorized modification or modification made at the request of Buyer; 4) Buyer’s failure to follow health and safety instructions provided by VAC or in accordance with industry standards; or 5) Buyer’s failure to comply with laws. Finally, VAC has no liability for any warranty claims: 1) if the Product has not been paid for in full; or 2) under circumstances where VAC has given a reason to believe that examination of the Products or Services to which the claim relates and Buyer returns any such Products to VAC upon VAC’s request.

11. CLAIM PERIOD; DISCLAIMER. In no event shall Buyer make a claim or commence any action against VAC later than one (1) year after delivery of the Products or Services to which the claim relates. Buyer’s failure to give VAC written notice of any claim or action within the applicable time period shall constitute an absolute and unconditional waiver of such claim or action. EXCEPT AS SET FORTH IN THE FOLLOWING, AT VAC’S SOLE DISCRETION, ANY DEFENSES OR WAIVERS, EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OR ANY OTHER RIGHTS OF A THIRD PARTY, BUYER ASSUMES ALL RISKS RESULTING FROM THE USE OF THE PRODUCT OR SERVICES PURCHASED, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROPORTION.

12. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT ALLOWED BY LAW, BUYER’S EXCLUSIVE REMEDY AGAINST VAC, AND VAC’S SOLE OBLIGATION, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE SHALL BE LIMITED TO EITHER OF THE FOLLOWING, AT VAC’S SOLE DISCRETION: (a) REIMBURSEMENT FOR THE PRODUCT OR REPERFORMANCE OF APPLICABLE SERVICES OR (b) CREDIT OR REFUND OF THE PRICE FOR SUCH PRODUCT OR, RESPECTIVELY, SERVICES AT THE PRO RATA CONTRACT RATE. THE PARTIES SHALL NOT BE LIABLE TO EACH OTHER IN ANY ACTION, OR CLAIM FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF OPPORTUNITY, WHETHER SUCH ACTION OR CLAIM IS BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, TO THE EXTENT PERMITTED BY LAW. ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THIS PROVISION ARE EXPRESSLY WAIVED BY BUYER. Products claimed to be nonconforming shall not be returned. Claims for nonconformity will be rejected if the nonconformity is caused by Buyer, Buyer’s failure to follow VAC’s instructions, Buyer’s failure to use the Product or Services according to VAC’s specifications, Buyer’s alteration of the Product or Services, or any act, omission or act of a third party, including, but not limited to, Buyer’s failure to obtain such additional or different terms which would materially alter this Agreement. Products or Services to which the claim relates. Buyer hereby indemnifies and agrees to defend and hold VAC, its subsidiaries and affiliates and their respective directors, officers, shareholders, employees, agents, subcontractors, and assigns harmless from and against all liability, losses, costs, damages, including reasonable attorneys fees, resulting from claims (unless finally determined to be the result of the gross negligence or willful misconduct of VAC) resulting from (a) use or handling of the Product or Services by Buyer or any third party, or (b) failure to properly label the Product or Services to which the claim relates. Buyer’s failure to give VAC written notice of non-acceptance to the carrier and VAC immediately upon receipt shall constitute final acceptance of the Product.

13. BUYER OBLIGATIONS. In addition to other obligations stated herein, Buyer assumes all risk and liability for loss or damage resulting from the handling, use, or application of the Product, Services, and containers delivered hereunder. Buyer agrees to familiarize itself and keep informed (without reliance on VAC) concerning any hazards to persons or property involved in handling and using such Product, Services, and containers. Buyer shall advise its employees, customers, agents, and others concerning the proper use of the Product or Services of any hazards or who may foreseeably do so. Buyer hereby indemnifies and agrees to defend and hold VAC, its subsidiaries and affiliates and their respective directors, officers, shareholders, employees, agents, subcontractors, and assigns harmless from and against all liability, losses, costs, damages, including reasonable attorneys fees, resulting from claims (unless finally determined to be the result of the gross negligence or willful misconduct of VAC) resulting from (a) use or handling of the Product or Services by Buyer or any third party.

14. EXCUSES AND NONPERFORMANCE. VAC shall not be responsible for delays in performance due to cause beyond VAC’s reasonable control, including but not limited to the acts or omissions of Buyer, acts of God, strikes or other labor disputes, acts of terror, war, plant shutdowns, voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority, inability to obtain raw materials, breakdowns of machinery or equipment, fires, explosions or accidents. In addition, VAC shall be excused in the event of its inability to obtain raw materials necessary for manufacturing the Product. In the event VAC is excused from performing pursuant to this Agreement, VAC shall have the right to utilize its available production capacity and/or supply raw materials to satisfy its own requirements and to allocate remaining production and/or supply among its customers as it sees fit, and Buyer hereby releases VAC from liability for any resulting incomplete fulfillment of any order.

15. MISCELLANEOUS. This Agreement is not assignable by Buyer. If any term or condition hereof shall be declared void, invalid or unenforceable by rule of law, that term or condition will be deemed modified or deleted, but only to the extent required to comply with such rule of law. The parties disclaim applicability of the U.N. Convention on Contracts for the International Sale of Goods to the sale of Products hereunder. This Agreement contains the entire understanding between the parties concerning the sale of Products and Services and there are no understandings, agreements, representations, express or implied, that are not contained herein. No modification of these terms and conditions shall be binding on VAC unless approved in writing by a duly authorized signing officer of VAC.