



## **Terms and Conditions of Sale, Warranty, Disclaimer, and Limitation of Liability**

### **TERMS AND CONDITIONS OF SALE**

Subject to these TERMS AND CONDITIONS (as may be amended, modified or supplemented from time to time, the "Terms and Conditions"), Link4 Corporation ("Link4") agrees to sell or provide such goods, products, parts, accessories and/or services, including any applicable documentation with respect thereto (collectively, "Goods"), as are identified and/or described in Link4's sales quotations, sales order acknowledgements, service agreements, change orders and/or invoices (collectively, "Order Documentation") issued by Link4 to its customer identified in any such Order Documentation (the "Customer").

#### **1. Agreement.**

1.1. These Terms and Conditions shall become binding upon Link4 and Customer upon the earlier of (i) Link4's issuance of a sales order acknowledgement to Customer or (ii) Link4's shipment of Goods to Customer, whether in whole or in part.

1.2. The Terms and Conditions are expressly limited to the terms and conditions set forth herein unless expressly modified with reference hereto in any of the Order Documentation. All terms set forth on Customer's purchase order or otherwise proposed by Customer are hereby objected to and shall be void unless expressly agreed to in a writing signed by Link4. These Terms and Conditions and the Order Documentation into which the Terms and Conditions have been incorporated contain the entire agreement of the parties ("Agreement") and all proposals, negotiations, representations or agreements made or entered prior to or contemporaneously herewith, whether oral or in writing, are expressly superseded.

#### **2. Prices, Taxes and Clearances.**

2.1. All prices for Link4's Goods are set forth in the applicable Order Documentation. Prices for Goods are FOB Link4's plant of manufacture unless otherwise specified in writing by the parties. Prices are stated in United States Dollars and payment shall be made in United States currency. Prices do not include sales, use, excise or any similar taxes. Any tax or other governmental charge upon the production, sale, shipment, or use of the Goods which Link4 is required to pay or collect from Customer shall be paid by Customer to Link4 unless Customer furnishes Link4 with a tax exemption certificate acceptable to the applicable taxing authority. Customer shall be responsible for obtaining any necessary governmental clearances, including any import and/or foreign exchange license, which may be required by the federal, any state or any foreign government, or any subdivision or agency of any thereof. Prices specified are for standard packaging only. Any special packaging requested by the Customer, including special protection for export shipment, will be at the Customer's expense.

#### **3. Payment.**

3.1. Customers with established credit may purchase for immediate processing of orders. Customers not previously established with credit may apply for open-account status. Orders received without suitable credit information must be prepaid in full prior to shipment. MasterCard, Visa and American Express cards are accepted under special terms, and require approval in advance. Payment of the purchase price for the Goods (including any applicable sales or use tax) is, unless otherwise indicated, due and payable thirty (30) days from the date of invoice with respect thereto. Thereafter, the unpaid balance of the

total purchase price shall bear interest at the rate of one and one-half percent (1.5%) per month until paid in full. [For complete details regarding payment options and related fees see Link4's document entitled Payment Options for Link4 Customers.](#)

3.2. Invoices shall be dated as of the date of shipment of Goods. However, if, in the opinion of Link4, the financial condition of Customer becomes impaired or unsatisfactory prior to payment in full with respect to the amounts due Link4 under the Agreement, Customer shall, if required by Link4 to do so, make payment in 10 days, make cash payments or furnish satisfactory security before any further deliveries are made. Failure or refusal by Customer to comply with the requirements that Link4 may impose upon Customer in accordance with the foregoing shall entitle Link4 to suspend deliveries of Goods under the Agreement during such failure or refusal or, alternatively, to terminate the Agreement. Any such action by Link4 shall not in any way prejudice Link4's claim for damages or Customer's obligations to pay for Goods already delivered.

#### **4. Risk of Loss, Title and Shipment.**

4.1. Risk of damage, destruction or loss and title to the Goods passes to Customer upon delivery to the designated carrier, and upon such delivery no damage, destruction or loss of the Goods shall release Customer from its obligations and liabilities to Link4 under the Agreement. Link4 will ship in accordance with instructions supplied by Customer, but if Customer fails to furnish such instructions, Link4 will select what is, in its opinion, the most satisfactory manner of shipping and will designate the carrier to be used for the shipment. Unless otherwise mutually agreed, shipping dates are approximate and based upon prompt receipt of all necessary information. Any prepayment by Link4 of freight charges shall be for the account of Customer and shall be paid by Customer with the total purchase price for the Goods.

#### **5. Force Majeure.**

5.1. Link4 shall not be liable for any delay in delivery of Goods, or failure to deliver Goods, due, directly or indirectly, to any cause beyond Link4's reasonable control, including, but not limited to, acts of God, fires, floods, strikes or other labor disputes, accidents, machinery or equipment breakdowns, acts of sabotage or terrorism, riots, wars, inability to obtain raw materials, components, fuel or supplies, delay in transportation or lack of transportation facilities, or any restrictions or delays imposed by or caused by policies of any federal, state, foreign or other governmental legislation, rules, regulations or orders. In the event of any such delay or failure, the Agreement shall not terminate but the required date of shipment of the Goods shall be extended for a period equal to the time lost because of any such failure or delay.

#### **6. Expiration.**

6.1. This Agreement shall expire upon the completion of all orders under the Order Documentation. Notwithstanding the foregoing, in the event of expiration of this Agreement, Sections 3, 5, 8, 9, 10, 13, 14, 15, 16 and 18 of this Agreement shall survive.

#### **7. Inspection and Acceptance.**

7.1. Upon delivery of the Goods to Customer's designated shipping destination, Customer shall promptly inspect the Goods for conformance to the Agreement. Any claim for shortage must be made in writing and received by Link4 within 10 days after Customer's receipt of the Goods along with documentation supporting the claim. All other claims, including claims for alleged defective products, to the extent they are not disclaimed by Link4 under this Agreement, must be made by Customer in writing and received by Link4 within the applicable time specified in Section 8.1(ii) below. All claims not made in writing, whether received by Link4 within the applicable time specified in Section 8.1(ii) below, shall be deemed waived.

#### **8. Returns and Repairs**

8.1. Returned product must be authorized by Link4 in advance, at which time a Return Materials Authorization (RMA) number will be issued. No returned product will be accepted unless accompanied by an RMA number, with the RMA number clearly identified on the outside of the shipping container.

Material returned without an RMA number will be refused by our shipping department. All return shipments must be prepaid. To obtain this number please call customer services at 714.975.9474. Visit [link4corp.com](http://link4corp.com) to learn more of the logistics of how to return a product.

8.2. A credit or a refund of the purchase price paid will be sent to the customer, minus shipping, handling, and any restocking fees associated. Note that discounted products or promotional items returned will receive the original amount that was paid at time of purchase. This is in line with the U.S. Return Policy guidelines, and a payment will be issued to you within 7 business days upon receipt of the return eligible products. This policy applies only to products purchased directly from Link4 Corporation. Unless otherwise agreed to in writing prior to purchase of products, Link4 products purchased through other parties must be returned directly to that party and handled in accordance with the respective returns and refund policies. For partial returns or damaged goods Link4 reserves the right to credit the customer less than may have been originally paid.

8.3. The minimum restocking charge will be 15% for any material not found to be defective. Such merchandise must be in original condition and unused to qualify for credit. Custom, special or built to order items may not qualify for credit; however, items may be returned for modification, which may incur an additional cost. Unless otherwise agreed to in writing, no returns for credit will be considered more than 30 days from date of shipment.

8.4. Repairs – A repair order must also have a Link4 Return Merchandise Authorization (RMA) number. Repairs that are not covered by the warranty will be billed on either a fixed price or a material and labor basis. Items that require repairs must be sent to Link4 with a prepaid return shipping label. Link4 is not responsible for damage(s) due to improper packaging or the shipping and delivery of items returned for repair.

#### **9. Limited Warranties.**

9.1. Subject to the exclusions and restrictions of this warranty, Link4 warrants that the Goods sold under this contract will be free from defects in material and workmanship for a period of twelve (12) months after the original date of purchase from Link4. Link4 will, at its sole discretion, either repair the defective Goods or issue a credit against the purchase price of comparable replacement Link4 Good. This warranty is limited to the repair and replacement of parts manufactured by Link4 and Link4's labor and services necessary to repair or replace such Goods. This warranty does not cover and Link4 is not responsible for labor costs to diagnose, remove, repair, reinstall, and/or program any Good.

**9.2 - This warranty shall be null and void, and Link4 shall have no liability under the terms of this warranty if the product, or system was not installed by an authorized Link4 dealer, distributor, or a certified commercial control system service provider. Furthermore, this warranty is null and void if the product, or system has been used in an application or environment other than that for which it was intended or if it has been subject to negligent misuse, abuse, accidental damage, modification, improper repair or installation procedures or adverse environmental factors, including, without limitation, to incorrect line voltages, improper wiring, improper rated fuses or circuit breakers, improper or insufficient ventilation, failure to maintain equipment under the specific ambient temperature limits, use of incompatible devices or accessories, unauthorized modifications or adjustments, or failure to comply with the applicable operating instructions or technical specifications provided by Link4, or acts of criminal or mischievous vandalism, commercial sabotage, acts of civil or military authorities, governmental actions, labor disputes.**

9.3. THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE ONLY WARRANTIES APPLICABLE TO THE SALE OF GOODS BY LINK4 TO CUSTOMER PURSUANT TO THE AGREEMENT, AND THEY EXCLUDE ALL OTHER EXPRESS, ORAL OR WRITTEN WARRANTIES, AS WELL AS ANY WARRANTIES IMPLIED BY LAW WITH RESPECT TO THE GOODS, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PURPOSE, NOTWITHSTANDING ANY DISCLOSURE TO LINK4 OF THE INTENDED USE OF THE GOODS.

9.4. Notwithstanding any provision hereof which may be or appear to be to the contrary, in no event

whatsoever shall Link4 Corporation's liability in respect to any claim, or action of any kind arising out of, in connection with, or resulting from the manufacture, sale, delivery, resale, use or repair of the goods or component parts thereof or the services rendered by Link4 Corporation pursuant to the agreement, or any breach by Link4 Corporation of any term of the agreement, exceed the price for the goods, or component part thereof, or service which gives rise to such claim or action. Customer assumes all other liability for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of the goods, either alone or in combination with other products, including, without limitation, any "special damages" or any loss, damage, or injury to customer (or to customer's employees or property or to the employees or property of any customer of customer or other user of the goods) due to the acts or omissions of customer, its agents, employees, or customers, in the installation, maintenance, use, or operation of such goods.

9.5 Link4 reserves the right to improve its Goods through changes in design or material without being obligated to incorporate such changes into Goods of prior manufacture. Customer cannot rely on any such changes as proof of insufficiency, or inadequacy of prior designs of the Goods or material contained in the Goods.

9.6 If Customer grants to an end user of the Goods (or any other customer of Customer) any warranty that is greater in scope or time than the warranty and claims period stated herein, Link4 shall not be liable beyond the scope of the limited warranty, the claim period, the damages, and the remedies provided for under this Section.

9.7 Except as expressly set forth in this warranty, Link4 makes no other warranties express or implied, nor does Link4 authorize any other party, including, without limitation, its customers to offer any warranty, including any implied warranties of merchantability, or fitness for a particular purpose. In the event that a competent court of proper jurisdiction imposes any implied warranties, the scope and duration of such warranties, including any implied warranty of merchantability, or fitness for a particular purpose, is expressly limited to these TERMS AND CONDITIONS.

#### **10. LIMITATION OF LIABILITY.**

10.1. LINK4 WILL NOT BE LIABLE FOR AND IS NOT (AND SHALL NOT BE) RESPONSIBLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT UNDER ANY CIRCUMSTANCES, INCLUDING, WITHOUT LIMITATION, LOSS OF LIFE, PERSONAL INJURY, LOSS OF INCOME (BUSINESS OR PERSONAL), DAMAGE, OR LOSS (INCLUDING ANY INCREASED COSTS SUFFERED OR INCURRED BY CUSTOMER) RESULTING FROM CUSTOMER'S INABILITY TO USE THE GOODS OR CUSTOMER'S (OR ITS CUSTOMER'S) INABILITY TO USE ANY EQUIPMENT, OR ANY INCREASED OPERATING COSTS OR LOSS OF PRODUCTION OR OTHER COSTS INCURRED BY CUSTOMER (OR ANY CUSTOMER OF CUSTOMER) IN REMOVING, REINSTATING, OR REPAIRING ALLEGEDLY DEFECTIVE OR NONCONFORMING GOODS, DELAY DAMAGES OR ANY OTHER SUCH DAMAGES, WHETHER ARISING FROM CAUSES SIMILAR TO OR DISSIMILAR TO THOSE ENUMERATED (COLLECTIVELY, "SPECIAL DAMAGES").

10.2. LINK4 DISCLAIMS ANY LIABILITY FOR FAILURE OF PERFORMANCE OR MALFUNCTION OF THE GOODS SUPPLIED BY LINK4 PURSUANT TO THE AGREEMENT WHICH IN LINK4'S OPINION IS THE DIRECT, OR INDIRECT RESULT OF ANY ACTION, OR INACTION BY CUSTOMER, OR ANY PARTY OTHER THAN LINK4 (INCLUDING, WITHOUT LIMITATION, ANY CUSTOMER OF CUSTOMER OR OTHER USER OF THE GOODS) INCLUDING, WITHOUT LIMITATION, ABUSE, NEGLIGENCE, ACCIDENT, IMPROPER INSTALLATION, MODIFICATIONS, OR REPAIRS NOT MADE BY LINK4, INCORRECT OR INAPPROPRIATE USE, OR APPLICATION, FAILURE TO MAINTAIN, UNSUITABILITY OR INCOMPATIBILITY WITH OTHER PRODUCTS, OR EQUIPMENT NOT SUPPLIED BY LINK4, OR THE PRESENCE OF NON-RECOMMENDED FLUIDS OR OTHER CONTAMINANTS.

10.3. NOTWITHSTANDING ANY PROVISION HEREOF WHICH MAY BE, OR APPEAR TO BE TO THE CONTRARY, IN NO EVENT WHATSOEVER SHALL LINK4'S LIABILITY IN RESPECT TO ANY CLAIM, OR ACTION OF ANY KIND ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THE MANUFACTURE, SALE,

DELIVERY, RESALE, USE, OR REPAIR OF THE GOODS, OR COMPONENT PARTS THEREOF, OR THE SERVICES RENDERED BY LINK4 PURSUANT TO THE AGREEMENT, OR ANY BREACH BY LINK4 OF ANY TERM OF THE AGREEMENT, EXCEED THE PRICE FOR THE GOODS, OR COMPONENT PART THEREOF OR SERVICE WHICH GIVES RISE TO SUCH CLAIM OR ACTION. CUSTOMER ASSUMES ALL OTHER LIABILITY FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE USE OF THE GOODS, EITHER ALONE, OR IN COMBINATION WITH OTHER PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY "SPECIAL DAMAGES," OR ANY LOSS, DAMAGE, OR INJURY TO CUSTOMER (OR TO CUSTOMER'S EMPLOYEES OR PROPERTY OR TO THE EMPLOYEES OR PROPERTY OF ANY CUSTOMER OF CUSTOMER OR OTHER USER OF THE GOODS) DUE TO THE ACTS OR OMISSIONS OF CUSTOMER, ITS AGENTS, EMPLOYEES, OR CUSTOMERS, IN THE INSTALLATION, MAINTENANCE, USE, OR OPERATION OF SUCH GOODS.

10.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, INCLUDING ANY INDEMNIFICATION OBLIGATION, LINK4 SHALL HAVE NO OBLIGATION TO CUSTOMER FOR ANY LIABILITY ARISING FROM (A) ANY PERSONNEL (INCLUDING ANY 3RD PARTY CONTRACTOR) OF CUSTOMER (I) PLACING ANY BODY PART IN MACHINERY, (II) OPERATING MACHINERY WITHOUT PROPER EYE, FACE OR BODY PROTECTION, (III) OPERATING OF MACHINERY WITHOUT APPROPRIATE TRAINING, (IV) OPERATING OF MACHINERY THAT HAS NOT BEEN MAINTAINED IN A MANNER CONSISTENT WITH INDUSTRY STANDARDS, OR (V) OPERATING MACHINERY THAT HAS BEEN TAMPERED, REWIRED OR BYPASSED BY CUSTOMER OR ANY THIRD PARTY; OR (B) A MECHANICAL DEFECT, MALFUNCTION OR FAILURE IN MACHINERY OR COMPONENT THEREOF OR OTHERWISE RESULTING FROM CUSTOMER'S BREACH OF THE AGREEMENT.

10.5. THE PARTIES ACKNOWLEDGE THAT THE ALLOCATION OF RISKS AND BENEFITS UNDER THIS AGREEMENT IS BASED ON, AND THE FEES PAID UNDER THIS AGREEMENT WOULD BE GREATER IN THE ABSENCE OF, THE LIMITATIONS DESCRIBED ABOVE. THIS SECTION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

#### **11. Compliance with Law.**

11.1. Link4 represents that Goods delivered by Link4 pursuant to the Agreement will comply with the Fair Labor Standards Act of 1938, as amended.

#### **12. Federal Contract Requirements.**

12.1. In the event the Agreement is subject to any of the following requirements related to federal contracts, Link4 represents that its performance hereunder is in compliance with: (i) Executive Order 11246, including section 202; (ii) The Vietnam Era Veterans Readjustment Assistance Act of 1974; (iii) applicable worker's compensation requirements; and (iv) The Rehabilitation Act of 1973.

#### **13. Indemnification; Intellectual Property.**

13.1. Notwithstanding any provision contained herein to the contrary, Customer agrees to indemnify and hold Link4 harmless from any and all damages, costs and expenses relating to any claim arising from the Goods on the Customer's premises including but not limited to (a) any person whether employed by customer or otherwise, intentionally or unintentionally (i) placing any body part in machinery, (ii) operating machinery without proper eye, face or body protection, (iii) operating of machinery without appropriate training, (iv) operating of machinery that has not been maintained, or is not operated, in a manner consistent with, OSHA, ANSI and other applicable industry standards, (v) operating machinery that has been tampered, rewired or bypassed by Customer or any third party or (b) a mechanical defect, malfunction or failure in machinery or component thereof or otherwise resulting from Customer's breach of the Agreement.

13.2. In the event any Goods to be furnished under the Agreement are to be made in accordance with drawings, samples or manufacturing specifications designated by Customer, Customer agrees to hold Link4 harmless from any and all damages, costs and expenses relating to any claim arising from the design, manufacture or use of such Goods or arising from a claim that such Goods furnished to

Customer by Link4, or the use thereof, infringes upon any intellectual property rights, including, without limitation, Letters Patent or trade secrets, foreign or domestic, and Customer agrees at its own expense to undertake the defense of any suit against Link4 brought upon such claim or claims. In the event, any Goods to be furnished under the Agreement are solely the design of Link4, Link4 agrees (subject to the last sentence of this Section) to hold harmless Customer and its customers against damage awarded by a court of final jurisdiction in any suit or suits for the infringement of any intellectual property rights or the violation of any trade secrets because of the sale or use of such Goods furnished by Link4 under the Agreement. Customer agrees to notify Link4 as soon as practicable of any charge or suit alleging any such infringement or violation, and agrees that the foregoing agreement by Link4 to indemnify shall not apply unless Link4 shall have been so notified and given the opportunity to take over the defense thereof, and further, such agreement to indemnify shall not apply if (i) the claimed infringement is settled without the consent of Link4 unless required by a final unappealable decree of a court of competent jurisdiction, or (ii) the infringement or violation results from the use of any Goods delivered pursuant to the Agreement in combination with a product not delivered thereunder where such infringement or violation would not have occurred from the use of the Goods alone delivered pursuant to the Agreement. Notwithstanding the foregoing, any obligation on Link4's part to indemnify Customer shall be limited solely in amount as provided for in Section 9 above.

13.3. The Parties agree that any work performed hereunder shall not be considered a "Work for Hire", and that for purposes of 17 U.S. Code Section 201(b) Link4 owns all rights comprised in any copyright obtained or obtainable by Link4; provided that this Section 12.2 shall not give Link4 and rights with respect to pre-existing works owned and provided by Customer to Link4 pursuant to this Agreement.

13.4. If the work product under this Agreement contains materials such as software, technology, know-how, algorithms, procedures, techniques, solutions, work-arounds or any other such materials which Link4 or others previously developed, patented, or copyrighted prior to the date of this Agreement and which were not developed as a result of providing Goods pursuant to this Agreement, Link4 hereby grants Customer an irrevocable, perpetual, worldwide royalty-free license to use, copy, modify, distribute, display, perform, import, manufacture, have made, and sublicense such materials for the purpose of exercising Customer's rights, title and interest in the work product.

#### **14. Proprietary Rights Reservations.**

14.1. All information of every kind and nature (except for such information as may be established to be in the public domain or which Customer may establish to be the property of Customer) related to the design, engineering, production, process, method, device, technique, formulas, plans, diagrams, drawings, compilations, patterns, tools, dies or fixtures in connection with or related to any component, device, material or other goods, products or services manufactured, provided or delivered pursuant to the Agreement are proprietary in favor of Link4. Such information has been developed at great expense to Link4 and may contain trade secrets of Link4. Customer shall not reproduce, disclose, distribute or utilize same without Link4's prior express written consent (which consent may be granted or denied in Link4's sole discretion) or as required by judicial or governmental action and Customer shall exercise reasonable care to hold such information in confidence.

#### **15. Uniform Commercial Code; Link4 Security Interest.**

15.1. Until the entire purchase price for the Goods (as set forth in invoices from time to time issued to Customer by Link4) has been fully paid, Link4 shall have, to secure payment thereof, a continuing senior purchase money security interest in the Goods and proceeds therefrom. Upon a default under these Terms and Conditions, Link4 shall have all the rights and remedies of a secured party under the Uniform Commercial Code as from time to time in effect in the State of Illinois

#### **16. Confidentiality; Non-Solicitation.**

16.1. The Parties acknowledge that each may disclose (the "Disclosing Party") certain valuable confidential and proprietary information to the other (the "Recipient Party"). "Confidential Information"

means all written (in whatever form or media embodied) or verbal information provided by the Disclosing Party to the Recipient Party concerning the Disclosing Party or its business, products or services that is not generally known to the public including information relating to the Disclosing Party's business affairs, customers, vendors, trade secrets, prices, products, services, accounting, marketing, finances, business systems and computer programs, and any other information designated as such by a Disclosing Party at the time of disclosure. All Confidential Information is the sole and exclusive property of the Disclosing Party. The restrictions set forth herein shall apply during the Term and after the termination of this Agreement.

16.2. Confidential Information shall not consist of information that:

- (i) can be shown through written documentation to have been known by Recipient Party without restriction on disclosure or use prior to disclosure by Disclosing Party;
- (ii) is or becomes information within the public domain (through no fault of Recipient Party);
- (iii) is independently developed by Recipient Party without reference to or knowledge of Confidential Information of the Disclosing Party;
- (iv) is rightfully received from third parties not subject to an obligation of confidence to the Disclosing Party; or
- (v) the release of which is pre-approved by Disclosing Party in writing.

16.3. The Recipient Party shall not use, reproduce or disclose, directly or indirectly, to any third party at any time any Confidential Information of the Disclosing Party. Recipient Party shall hold all Confidential Information of the Disclosing Party in strict confidence. Recipient Party shall not use such Confidential Information in any manner, except in connection with performance under the Agreement or other written agreements between Link4 and Customer relating to such Confidential Information.

16.4. Recipient Party agrees that Confidential Information of Disclosing Party will not be disclosed or made available to any person for any reason whatsoever, other than on a "need to know basis" and then only: (i) to Recipient Party's employees and subcontractors and professional advisors who are subject to confidentiality restrictions with respect to Confidential Information; (ii) as required by applicable law; or (iii) as otherwise expressly permitted by the Agreement. Prior to any disclosure of Disclosing Party's Confidential Information as required by applicable law, Recipient Party shall (1) notify Disclosing Party of any, actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure immediately upon becoming so obligated, and (2) cooperate with Disclosing Party's reasonable, lawful efforts to resist, limit or delay disclosure.

16.5. Recipient Party acknowledges that any remedy at law for the breach or threatened breach of this Section may be inadequate to fully and properly protect Disclosing Party, and therefore, the Parties agree that Disclosing Party shall be entitled to injunctive relief in addition to other available remedies, provided however, that nothing contained herein shall be construed as prohibiting Disclosing Party from pursuing any other remedies available in law or in equity for such breach or threatened breach.

16.6. Upon the termination or expiration of the Agreement, or at any time upon Disclosing Party's request, Recipient Party shall return immediately or destroy (at Disclosing Party's sole discretion) all Confidential Information of Disclosing Party in the possession of Recipient Party or in the possession of any third party over which Recipient Party has or may exercise control.

#### **17. Default.**

17.1. The occurrence of any of the following events shall constitute Customer's default under the Agreement: (i) Customer's failure to make timely payment of any sum owing to Link4 under the Agreement; (ii) institution of any proceedings by or against Customer under any bankruptcy, insolvency or similar law; (iii) appointment or application for a receiver for Customer; (iv) an assignment by Customer for the benefit of creditors; (v) failure of Customer to furnish Link4, upon Link4 request, with a written representation reaffirming Customer's solvency (it being understood that the Agreement constitutes a representation by Customer that it is solvent); or (vi) Link4 deems itself insecure with

respect to performance by Customer under the Agreement.

17.2. Upon Customer's default, hereunder, Link4 may, upon written notice to Customer, cancel any remaining obligations of Link4 under the Agreement, in which case, at Link4's option:

(i) Customer shall pay for all Goods delivered and for all Goods completed or in process pursuant to the Agreement;

(ii) With respect to any Goods for which Link4 has not received full payment, Link4 may stop delivery, retake (or retain) possession of such Goods wherever located (all without notice, demand or legal process) and retain, lease or resell (at public or private auction or otherwise) such Goods without accounting to Customer and any payments received by Link4 from Customer may be retained as liquidated damages;

(iii) Link4 may declare any outstanding balance immediately due and owing and collect same from Customer without further notice or demand, together with interest at the maximum rate permitted by law; and/or

(iv) Refuse to deliver any Goods except on a cash basis.

**18. Miscellaneous.**

18.1. No waiver by Link4 of any default shall be deemed a waiver of any subsequent default unless the same shall be signed in writing by Link4.

18.2. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If any provision of this Agreement is invalid or unenforceable, but by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

18.3. The provisions of the Agreement shall be binding upon and inure to the benefit of the respective representatives, successors and assigns of the parties hereto, including, without limitation, a debtor-in-possession; provided, however, that no interest herein may be assigned by Customer without the prior written consent of Link4.

18.4. No waiver, alteration or modification of the terms and conditions hereof shall be valid or binding upon Link4 unless made in writing and signed by Link4.

18.5. This Agreement shall, for all purposes, be governed by and construed under the laws of the State of California. Without limitation of the foregoing, Customer irrevocably agrees that all actions or proceedings in any way, manner or respect arising out of or from, or relating to, the Agreement shall be litigated only in California state courts and United States District Courts having situs in Santa Ana, California. Customer consents and submits to the jurisdiction of any local, state or federal court located within said county and state, and waives any and all objections to jurisdiction that Customer may have under the laws of the United States, including any claim or objection that any such court is an inconvenient forum. Further, Customer hereby waives, to the fullest extent permitted by law, all rights to have any dispute or claim arising under the Agreement litigated before a jury.