Engineered Systems Sales Agreement

RA 09879-ESSA/09.2013
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THIS Engineered Systems Sales Agreement ("ESSA" or "Agreement"), is made by and between Bosch Rexroth Corporation, a Pennsylvania corporation ("Seller" or "Rexroth") with an office at 2315 City Line Road, Bethlehem, Pennsylvania 18017-2131, and Buyer, the party procuring goods, equipment, and/or service from Rexroth.

ARTICLE ONE – DEFINITIONS

1.1 Agreement. "Agreement" means this Engineered Systems Sales Agreement, together with all Exhibits and Schedules incorporated in this Agreement by reference, all Purchase Orders and Change Orders issued pursuant to the Agreement, all Plans and Specifications applicable to this Agreement, and all Amendments to this Agreement.

1.2 Amendment. "Amendment" means a Change Order, written document, or letter signed by or on behalf of both Buyer and Seller which is intended to modify this Agreement.

1.3 Buyer. "Buyer" means the legal entity, firm, or anyone ordering goods and/or services from Seller.

1.4 Change Order. "Change Order" means a document which is intended to make changes in the character or quantity of the items to be furnished hereunder, including changes in Plans and Specifications, instructions for work, methods of shipment or packaging, or schedules of or places for delivery of the items.

1.5 Confidential Information. "Confidential Information" means any and all written or documentary information of either the Seller or Buyer transmitted to the other party hereunder and which is marked "Confidential" or Proprietary" at the time of its transmission to the receiving party, and includes information generated by the receiving party that reflects or reveals confidential and proprietary information of the transmitting party. Confidential Information includes, but is not limited to, design and development information, whether conceptual or not or patentable or not, drawings, specifications, graphs, as well as engineering, manufacturing, business and marketing plans and processes, strategies and financial studies and analysis. Any proprietary or confidential information transmitted to the receiving party orally or visually hereunder may be classified as Confidential Information, by so designating at the time of transmission followed by a reduction to documentary form and submission to the receiving party within forty-five (45) days from the date of transmission.

1.6 Designer. "Designer" means Buyer or any other party providing Plans and Specifications to Seller.

1.7 Equipment. "Equipment" means the goods, which are described in Seller's Quotation.

1.8 Items. "Items" means all Equipment and Services.

1.9 Plans and Specifications. "Plans and Specifications" means all drawings and other written and pictorial descriptions of the Equipment, whether prepared by or at the direction or on behalf of Buyer, Seller, or any other person, intended to fit and describe the size, quality and character of the Equipment, its systems, materials and other appropriate elements.

1.10 Premises. "Premises" means the location designated by Buyer at which Equipment is to be installed or Services are to be performed.

1.11 Purchase Order. "Purchase Order" means a purchase order issued by Buyer on Buyer's standard purchase order form.

1.12 Seller. "Seller" means Bosch Rexroth Corporation.

1.13 Seller's Quotation. "Seller's Quotation" means the written quotation or proposal issued by Seller to Buyer in response to Buyer's request for a bid, quotation, proposal or similar communication.

1.14 Services. "Services" means all acts, work, labor and other personal services (including, without limitation, professional services, training and supervision, and transportation of Equipment) done by or at the direction or on behalf of Seller for the benefit of Buyer.

1.15 Work. "Work" means Seller's Equipment, Services, or Items provided to Buyer.

ARTICLE TWO – CONTRACT FORMATION AND ADMINISTRATION

2.1 Contract Formation. This Agreement is binding upon Buyer and Seller and is enforceable in accordance with its terms. The terms and conditions contained in this Agreement apply to any Purchase Order placed by Buyer with Seller with respect to the Items.

2.2 Other Terms. Any terms contained in Buyer's offer to buy, request for quotation, Purchase Order or any other form or communication received from Buyer which are in addition to or different from the terms and conditions contained in this Agreement are expressly objected to and shall be deemed rejected by Seller, unless expressly accepted in writing by Seller. In the event that the printed terms of Seller's order acknowledgment are in conflict with the terms of this Agreement, the terms of this Agreement shall control. In the event that the terms of Seller's Quotation add to or conflict with the terms of this Agreement, the terms of Seller's Quotation shall control.

2.3 Amendment. This Agreement may be amended by the parties only as expressly agreed to in writing and signed by both parties.

2.4 Change Orders. Change Orders may be submitted by either Buyer or Seller. All Change Orders must be in writing and signed by a duly authorized representative of Buyer and Seller. If any Change Order results in an increase (or decrease) in Seller's cost or in the time for performance, Seller shall be entitled to an equitable adjustment in the price or time for performance of the work covered by this Agreement based upon the actual difference in expense or time necessary for performance of the work, together with a reasonable allocation of overhead and profit. Seller shall provide an estimate of any anticipated price increase or delay in performance time within thirty (30) days of the date of receipt of Buyer's Change Order. However, notwithstanding the foregoing, Seller shall be under no obligation to proceed with major changes in the original Scope of Work without Buyer's written Change Order, and an equitable adjustment in price and/or time to complete the Scope of Work.

2.5 Entire Agreement. The terms and conditions contained or incorporated by reference in this Agreement constitute the complete and exclusive statement of the terms and conditions of the agreement between Buyer and Seller for the purchase and sale of the Items to be purchased and sold hereunder and/or Services provided. Except as set forth in Section 2.2 of this Agreement, no other statements, representations, writings, understandings, or agreements, either written or oral, by either party or any representative of either party, either in negotiations leading to this Agreement or during the term hereof, shall be binding or of any force or effect.

2.6 Miscellaneous. Except as hereinafter provided, no document making up a part of Buyer's contract with its customer or otherwise included by reference by Buyer shall be binding upon Seller except to the extent accepted in writing by Seller. As between Seller and Buyer, Seller shall have all of the same rights, remedies and redress that Buyer has pursuant to its contract with its customer. Buyer agrees to provide all reasonable assistance to Seller in the event of Seller's claims with Buyer's customer; including, at Seller's election and sole expense, actively supporting and assisting Seller's pursuit of such claims with Buyer's customer.

ARTICLE THREE – SHIPMENT/PERFORMANCE

3.1 Packaging, Labeling and Shipping. Seller will package and load the Equipment, at Buyer's expense, so as to avoid any damage in transit, identify the Equipment by displaying Buyer's name, address and Purchase Order number on each unit or package shipped, and ship the Equipment in the manner and by the route and carrier specified in Seller's Quotation. A packing list in English will be enclosed in all shipments showing Buyer's Purchase Order number and the exact quantity and description of Equipment shipped. Bills of lading showing full routing, car or truck number, other customary data and Buyer's Purchase Order

number shall be dated and be included at the time of each shipment.

3.2 Notice of Shipment. Seller shall use good faith efforts to provide Buyer at least one (1) day advance written notice of the dates upon which each shipment will be made. Each notice shall also specify the mode of each shipment (rail, motor carrier, etc.), whether the shipment requires a load permit, and the maximum total value, weight, dimensions and point of origin of each shipment. Upon request by Buyer, Buyer also shall be contacted by the driver(s) of the load(s) transported by truck twenty- four (24) hours prior to on-site delivery in order to secure proper unloading equipment. This requirement must be specifically stated on the driver's bill of lading.

3.3 Shipment. All Shipping Dates are estimates only, as per Seller's quotation or order acknowledgement. Title and risk of loss shall pass to Buyer upon Seller tendering the Equipment with a carrier at the shipping point set forth in Seller's Quotation, or as mutually agreed. Seller's liability for damages due to delay shall apply only to the final deliverable, shall not exceed five percent (5%) of original order value, and shall be applied only with respect to the value of the Work delayed.

3.4 Force Majeure. Neither Buyer nor Seller shall be liable to the other for default or delay in the performance of their respective obligations under this Agreement when and to the extent that default or delay is caused by the existence, happening or continuance of any contingency preventing or substantially interrupting or curtailing their respective business including, but not limited to, fire, flood, theft, explosion, accident, riot, war, acts or threatened acts of terrorism, epidemic, order, act, authority, regulation or request of or threat thereof by any federal, state, local or municipal unit of government or department or agency thereof, judicial action, lock-out, strike, labor dispute, industrial disturbance, shortage or failure of labor, fuel, power, components, facilities or raw materials, delay of suppliers, act of or omission to act by the other party hereto or the respective employees, agents, contractors, and suppliers of the other party hereto, restriction or lack of transportation facilities, failure or delay in transportation, act of God, adverse weather conditions not reasonably anticipated, unavoidable casualties, breakage or accident to machinery or equipment, involuntary shutdown of facilities, or any other cause beyond the reasonable control of Buyer or Seller, provided, however, that Buyer and Seller shall use their respective best efforts to overcome and minimize the effect of such events.

3.5 Progress Reports. Seller shall, upon request by Buyer, provide Buyer with written reports on the status of Seller's work under this Agreement.

3.6 Project Schedule and Price Adjustments. Seller shall be entitled to equitable adjustments of the time to perform and/or Agreement price, including but not limited to any increased costs of labor, supervision, equipment or materials, and reasonable overhead and profit, for any modification of the project schedule differing from the bid schedule, and for any other delays, acceleration, out-of-sequence work and schedule changes beyond its reasonable control, including but not limited to those caused by labor unrest, fires, floods, acts of nature or government, wars, embargoes, vendor priorities and allocations, transportation delays, suspension of work for non-payment or as ordered by Buyer, or other delays caused by Buyer or others. Seller may impose upon Buyer reasonable charges for storage for any Items completed by Seller and not shipped when ready to ship due to Buyer's request, including Seller's reasonable costs of demobilization, delay, and remobilization. Should work be delayed by any of the aforementioned causes for a period exceeding ninety (90) days, Seller shall be entitled to terminate the Agreement. Seller's change proposals must be processed in not more than thirty (30) calendar days or as otherwise indicated on the change proposal. Seller may also claim damages for cumulative impact of multiple changes on Seller's efficiency. Seller's entitlement to adjustments shall not be contingent upon, or limited to, adjustments received by Buyer

ARTICLE FOUR – PRICES, PAYMENT AND ACCEPTANCE

4.1 Payment Terms. Buyer shall make payments for the Items in accordance with the dates or payment schedule specified in Seller's documents. Until receipt of payment in full, Buyer hereby grants, and Seller hereby retains, a security interest in the Items, wherever located and irrespective of its integration into other equipment, machines or systems, and in the proceeds thereof, and in Buyer's general account receivables, to secure payment of the purchase price for the Items. Buyer further authorizes Seller to take

whatever steps may be necessary to perfect such security interest, including without limitation the filing of a financing statement, and Buyer shall cooperate and assist in completing any such actions necessary to perfect such security interest. Under no circumstance shall Buyer have the right of setoff under this Agreement.

4.2 Risk of Payment. Seller does not accept the risk of Buyer's receipt of payments from any source, and in no event will payments to Seller be based upon, or subject to, Buyer's receipt of payment for Seller's Items. Seller will only issue waivers of lien or bond rights that exclude any waiver of lien or bond rights securing payment of retainage, unbilled changes, and claims which have been asserted in writing or which have not yet become known to Seller, and any such waivers shall either (i) apply only through the date of Items covered by Seller's last payment application that has been paid in full, or (ii) shall be conditional upon receipt of funds actually received to Seller's account without any bankruptcy filing ninety (90) days thereafter. Should Seller's payment be delayed because (a) Buyer fails to receive timely payment of amounts certified and approved, or (b) Buyer fails to make timely payment after itself receiving payment for Seller's Items, or (c) because Buyer's payments are not received by Buyer for reasons not the fault of or directly related to Seller's Items, then Seller may suspend Seller's Items after giving at least five (5) days written notice to Buyer of the intent to suspend and the date of intended suspension. Should Seller's Items be thereafter suspended for at least twenty-one (21) days, Seller may terminate this Agreement upon written notice of termination to Buyer.

4.3 Taxes and Fees. Unless otherwise stated in Seller's Quotation, prices do not include all applicable present or future domestic or foreign federal, state, local and municipal, occupation, sales, use, excise or other similar taxes, or inspection, building, permit, license, or testing fees which shall be the responsibility of Buyer. Seller is responsible for USA duty and customs fees as well as for any taxes imposed on the net income of Seller.

4.4 Invoices and Credit. Pro rata payments shall become immediately due and payable upon Seller's completion of milestone criteria and/or delivery without set off and without further act or deed of Seller. Seller reserves the right to grant, deny or stop advancing credit at any time in its sole discretion. Seller's credit policies are subject to change at any time without notice. Buyer hereby consents to Seller giving or obtaining credit information to or from third parties regarding Buyer.

4.5 Inspection and Testing during Manufacturing. Buyer or Buyer's representatives shall have the right, upon reasonable notice to Seller (usually thirty (30) days in advance of test) to inspect and witness Seller's testing of all Equipment at Seller's place of business. Seller shall provide manufacturing facilities for inspections by Buyer, and shall furnish full information regarding all materials entering into the production of the Equipment. Buyer shall immediately notify Seller of any deficiencies identified by Buyer, and Seller shall have a reasonable time within which to rectify such deficiency. Buyer's waiver of inspection constitutes Buyer's acceptance of Seller's test results verifying that the Equipment conforms to the Plans and Specifications.

4.6 Inspection Before Acceptance. Buyer shall have the right to inspect and test all of the Equipment after its installation or assembly at Buyer's premises before Acceptance, and to reject any or all of the Equipment, which is defective or fails to conform to the approved Plans and Specifications. Payment for the Equipment shall not constitute Acceptance. Buyer shall immediately notify Seller of any deficiencies identified by Buyer, and Seller shall have a reasonable time within which to rectify such deficiency.

4.7 Accuracy of Testing Results. The performance, quality, quantities, dimensions, weight, capacity, conformity and characteristics as established in the Plans and Specifications will be deemed accurate when the Equipment is demonstrated to conform with the Plans and Specifications at the time of inspection or testing.

4.8 Acceptance of Equipment. Buyer accepts the Equipment upon the earlier of (a) thirty (30) days after its installation or assembly at Buyer's premises, or (b) when Buyer places the Equipment in service, or (c) six (6) months after Buyer is notified by Seller that the Equipment is ready to ship, whichever occurs first.

4.9 Acceptance of Services. Any Services performed by Seller relating in any way to Equipment produced by Seller will be subject to this Agreement. Buyer Accepts any Services performed upon the earlier of (a) when Services are performed unless exception is

taken at that time in writing, or (b) upon sign-off of Seller's personnel's daily time sheets by Buyer's representative.

4.10 Seller's Remedies for Non-Payment. Without limiting Seller's other remedies as provided herein or by law, Buyer shall pay a late charge of $25.00 plus interest in the amount of 1 ½ % interest per month, or the maximum allowed by law, whichever is greater, with respect to any payment not received by Seller when due, and reimburse Seller its reasonable attorney's fees and/or collection agency fees incurred in connection with Seller's efforts to collect overdue amounts. In the event Buyer fails to pay any amount due hereunder when due or is otherwise in default of this Agreement or any other agreement to which Seller and Buyer are parties at the time, Seller shall without prejudice to other available remedies be permitted to (a) stop all work under this Agreement and all other agreements between the parties until all payments due are received by Seller or other such breach or default is cured by Buyer, and (b) impose upon Buyer reasonable charges for storage for any Items completed by Seller and not shipped to Buyer due to Buyer's failure to make timely payments, including Seller's reasonable costs of demobilization, delay, and remobilization. All funds received by or owed to Buyer from a third party, to the extent that such funds relate to Items furnished by Seller pursuant to this Agreement shall be held in trust for the benefit of Seller ("Trust Funds"). Until such time as Seller has been paid in full for the Items supplied hereunder, Buyer shall account to and within seven (7) days from Buyer's receipt of such Trust Funds from a third party, pay over to Seller all such Trust Funds received by Buyer. Buyer further agrees to direct any third party holding any such Trust Funds to pay over such funds to Seller upon Seller's request. Buyer may commingle Trust Funds, but agrees it has no right, title or ownership interest in Trust Funds held by any third party and to promptly account for and pay to Seller all such Trust Funds. Buyer shall retain no greater percentage or amount from the Seller than that retained from Buyer by any third party to the extent that such funds relate to Items furnished by Seller pursuant to this Agreement.

4.11 Adequate Assurance of Performance. If Buyer fails to fulfill the terms of payment of any invoice, or if the financial responsibility of the Buyer shall become impaired or unsatisfactory to the Seller, or if necessitated by any acts of any governmental authority, including financial disclosures mandated by Section 409 of Sarbanes Oxley Act, the Seller reserves the right to change terms of payment and/or defer or discontinue further shipments without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Buyer's credit standing are received by the Seller or until such acts of requirements of such governmental authority shall have been complied with.

The Seller also reserves the right in the case of any of the foregoing events to cancel the contract, in which event the Buyer shall compensate the Seller for any commitments, obligations, expenditures, expenses, and costs, including attorney fees, the Seller may have incurred in connection with the contract. Each shipment by the Seller shall be considered a separate transaction and if payment is not received therefore within the periods specified herein, the Seller at its option may bring a separate suit to recover the contract price of each such shipment.

If any of the following events occur, Seller shall have the right to demand assurance from Buyer that payment in full will be made:

1. Buyer is delinquent in making payment hereunder for a period of 45 days after payment was due.
2. Buyer fails to meet its obligations with one or more other suppliers as the obligations occur.
3. A Writ of Attachment or Judgment is entered in any court of competent jurisdiction.

On written demand for assurance by Seller, Buyer shall, within five (5) days after receipt thereof, furnish, in an amount sufficient to secure the full payment of the balance of any monies due hereunder on account of the purchase price, either a penalty bond issued by a competent surety company, or financial security, bank irrevocable letter of credit, or other liquid collateral to be held in escrow by an attorney at law as designated by Seller, to secure the payment of the purchase price aforesaid.

4.12 Retainage. Buyer shall not deduct retainage from Seller's payments except to the extent of retainage held by Buyer's customer relating to Seller's Work, but in no case shall such retainage be greater than ten percent (10%) of the value of this Order. Within seven (7) days after receiving payment of any retainage relating to Seller's Work, Buyer shall pay the

same to Seller, failing which, interest shall accrue as provided herein with respect to late payments. Buyer will use its best efforts to secure release of any such retainage as soon as possible in accordance with Buyer's written agreement with Buyer's customer as existing and disclosed to Seller on the date of this Agreement, failing which Seller may look to Buyer for payment to Seller of all amounts retained by Buyer's customer plus interest.

4.13 Cost of materials. A change in the price of an item of more than five percent (5%) between the date of Seller's quotation and the date of Seller's procurement or installation shall warrant an equitable adjustment in the Agreement price, which the parties agree to negotiate in good faith.

4.14 Suspension of Work. In the event of a suspension of work by Buyer and/or project owner, or by Seller in accordance with Paragraph 4.11, Buyer's liability to Seller is for payment in full for all Work performed to the date of suspension, costs of delay, demobilization and remobilization that result from the suspension, and an equitable adjustment of the schedule.

4.15 Termination of Agreement. In the event of any termination by Buyer, and/or Buyer's customer and/or project owner, which is not justified by a default of Seller, or termination by Seller, Seller shall be entitled to payment from Buyer for all costs incurred by Seller for which Seller has not received payment, plus reasonable overhead, profit, expenses, reasonable attorneys' fees, interest, and overhead and profit on unperformed Work. In the event of termination by Buyer, and/or Buyer's customer and/or project owner, for any reason regardless of default by Seller, Buyer, and/or Buyer's customer and/or project owner, shall be entitled to an interest in and the use of only those materials and supplies located on the Premises for which payment has been made to Seller. Under no circumstances shall any party other than Seller be entitled to any interest in or use of Seller's tools, machinery or equipment, regardless of whether the same are located on the Premises.

4.16 Notice and opportunity to cure. Buyer shall make a careful inspection of all labor and material at time of delivery. Buyer's failure to give written notice specifying any claim within ten (10) days of delivery shall constitute an unqualified acceptance of the labor and material delivered and a waiver of all claims. Seller will not be liable for any damage, warranty or remedy and back charges will not be accepted without prior notification, an opportunity to view and repair, replace or otherwise cure, and approval by Seller.

4.17 Waivers. All mechanic's lien, payment bond or similar waivers or restrictive endorsements placed on checks or other form of payment shall only be applicable with respect to the total amount of payments actually received in the absence of any bankruptcy filing for a period of ninety (90) days thereafter. Buyer agrees that Seller retains it mechanic's lien, payment bond or other legal rights available in the event of nonpayment for Services or Equipment irrespective of any other applicable documents.

ARTICLE FIVE – BUYER'S ACTIVITIES UPON SELLER'S MANUFACTURING PREMISES

5.1 Buyer's Activities Upon Seller's Manufacturing Premises.

5.1.1 Indemnity. Buyer shall indemnify, hold harmless and defend Seller, including its agents and employees, from and against all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from the Buyer or Buyer's representative's activities on Seller's premises, provided that any such claim, damage, loss, or expense (a) arises out of bodily injury, sickness, disease, or death, or property damage, and (b) is caused by the negligent act or omission of the Buyer, or its employees, agents, customers or contractors, and (c) is not caused by any intentional or negligent act or omission of Seller, or its employees, agents or contractors. In any and all claims against any indemnified party by any employee of the Buyer or any one acting on behalf of the Buyer, or by any person directly or indirectly employed by the Buyer, the indemnification obligation under this clause shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Buyer or anyone acting on behalf of the Buyer under worker's compensation acts, disability benefit acts, or other employee benefit acts.

5.1.2 Insurance. Unless otherwise mutually agreed to, Buyer shall carry and maintain during Seller's performance of Work, insurance with coverage and minimum limits as reasonably specified by Seller, but at the minimum:

(a) Worker's compensation insurance in accordance with statutory requirements and employer's liability insurance in accordance with statutory requirements.

b) Commercial general liability insurance covering bodily injury and property damage, including products and completed operations coverage with a minimum of $2,000,000 per occurrence and in the aggregate.

(c) Automobile liability insurance covering bodily injury and property damage including coverage for owned, hired, and non-owned automobiles with a minimum of $2,000,000 combined single limit. Buyer shall furnish Seller certificates showing that such insurance is in full force and effect prior to participating in any activities on Seller's premises. Commercial general liability insurance shall be endorsed to provide contractual liability.

(d) In the event that Seller agrees to add Buyer as an additional insured under any Work, then Buyer will also be required to add Seller as an additional insured to any Buyer insurance policy, and to waive subrogation for claims covered by workers' compensation or commercial general liability insurance.

5.2 Safety. Buyer and Buyer's representatives will comply with all of Seller's safety policies as well as all applicable rules, regulations, order and other lawful requirements established to prevent injury, loss or damage to persons or property.

5.3 Buyer supplied software, equipment, or personnel. In the event that the availability or functioning (as well as non-availability or non-functioning) of Buyer supplied software, equipment, or personnel delays negatively impacts the manufacturing process, including testing, Buyer agrees to be liable for all additional costs to Seller which may result, including delays to project schedule.

ARTICLE SIX – WARRANTIES AND REMEDIES

6.1 Warranty Regarding System. Whether or not Seller is a merchant with regard to the Equipment provided by it, Seller expressly warrants and guarantees to Buyer for the Warranty Period specified herein that all Equipment sold by Seller hereunder (a) will be of good quality and workmanship and free from defects, latent or patent, in materials and workmanship under normal operating conditions and proper application in accordance with specifications for operations as described in the Seller's Quotation (b) will be manufactured utilizing new materials, unless otherwise specified or agreed by Buyer, (c) will substantially conform to the requirements of this Agreement (without substitution of materials or accessories, unless with Buyer's consent) and all applicable Plans and Specifications, and (d) will be free of all liens and encumbrances and claims of title of third parties. **THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR INTENDED USE.**

6.2 Warranty Regarding Services. Whether or not Seller is a merchant with regard to the Services provided by it, Seller expressly warrants and guarantees to Buyer that all Services performed by Seller hereunder (a) will be performed in a good and workmanlike manner by qualified persons selected and paid by Seller, (b) will be performed in accordance with generally accepted professional standards and practices and in a manner consistent with the manner in which such Services are customarily performed by experienced and competent persons rendering the same or similar Services with regard to projects of similar size, cost, and complexity, and (c) will conform to the requirements of this Agreement, applicable Plans and Specifications, and applicable federal and state statutes, codes, and regulations.

6.3 Plans and Specifications. Seller shall prepare and submit to Buyer Plans and Specifications, operating and maintenance manuals, if and as specified in Seller's Quotation. Buyer or Buyer's representatives review of Plans and Specifications or other data developed by Seller in connection with this Agreement and suggestions or comments to, or approval of such Plans and Specifications or other data, relieves Seller of any responsibility for any implied warranty hereunder as to the reliability, quality, rate of output, cost, delivery, or performance of the Items or any other requirements of this Agreement.

6.4 Repair or Replacement of Non-Conforming Equipment or Services. During the warranty period, Buyer's sole and exclusive remedy under the warranty shall be limited to the repair or replacement of warranted Equipment or Services, location to be at Seller's option. In the event Seller elects to repair such Equipment or Services, Buyer will, at its cost, provide Seller with unobstructed access to the Equipment, adequate space in the immediate vicinity of the Equipment, and such facilities and systems, including, without limitation, forklifts, cranes and other equipment, as well as utility connects and

disconnects, as may be necessary to facilitate performance by Seller of its obligations under the warranty. At Seller's option, any such non-conforming Equipment may be returned by Buyer, at Buyer's expense, to Seller's factory or authorized factory service center, or repaired in place at Buyer's facility. Seller shall not be responsible for any charges for labor and/or parts incidental to the removal and re-installation/remounting of Equipment repaired or replaced under this warranty.

6.5 Incidental and Consequential Damages. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INDIRECT OR OTHER SIMILAR-TYPE DAMAGES, OR FOR CONTINGENT LIABILITIES INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, INCOME OR PROFITS, DOWNTIME COSTS, OR OTHER COMMERCIAL LOSS RESULTING FROM NON-CONFORMING EQUIPMENT OR SERVICES. SELLER'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS AGREEMENT, OR FROM PERFORMANCE OR BREACH THEREOF, SHALL, IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE EQUIPMENT OR THE SERVICES, OR ANY UNIT THEREOF WHICH GIVES RISE TO THE CLAIM. SELLER SHALL NOT IN ANY CASE BE LIABLE FOR PENALTIES OF ANY KIND OR DESCRIPTION.**

6.6 Warranty Period. Seller's Warranty Period is the earlier of (a) eighteen (18) months after shipment by Seller, or (b) twelve (12) months after the equipment is placed in service, whichever occurs first. The warranty period shall not be extended or otherwise modified as a result of the repair or replacement of any non-conforming Equipment or its components. Buyer-supplied and/or Buyer-specified (or Buyer's customer-supplied and/or Buyer's customer-specified) items on systems, assemblies or power units are warranted per original manufacturer's warranty policy only.

6.7 End-User Warranty. If the Buyer or Agent grants to an "end-user" any warranty which is greater in scope, time period or labor allowance than the warranty stated herein, Seller shall not be liable beyond this stated warranty. No attempt to repair or improve the Goods or parts by any of Seller's representatives shall change or extend this warranty.

6.8 Warranty Processing Procedures. No products shall be returned without prior authorization from Seller. Buyer shall prepay all transportation charges for the return of such products to Seller's factory or authorized factory service center. Seller will not accept any charges for labor and/or parts incidental to the removal and remounting of products repaired or replaced under this warranty. All repair and replacement parts provided under this warranty will assume the identity, for warranty purposes, of the part replaced and the warranty on such replacement parts will expire when the warranty on the original part would have expired. Claims must be submitted within 30 days of failure or be subject to rejection. This warranty is not transferable beyond the first using Buyer.

6.9 Exclusions. The foregoing warranty does not cover conditions over which Seller has no control, including, without limitation, contamination, incorrect power supply, pressures in excess of recommended maximum, products damaged or subjected to voltage, humidity, or temperature outside of specified range, accident, abuse or misuse after shipment from Seller's factory, products altered, disassembled or repaired by anyone other than Seller's personnel, Seller authorized factory service center personnel or persons so designated in writing by Seller's Service Department prior to commencement of said work. Types of failures which are not attributable to defects in materials and/or workmanship and which are not considered by Seller as part of its warranty include, but are not limited to the following conditions caused by anyone other than Seller:

- Damages due to deterioration during periods of storage by the Buyer prior to installation and operation.
- Damage of any kind from erosive or corrosive action of any gases or liquids handled by the machinery.
- Lack of or incorrect type of fluid, lubricants, air line additives.
- Contamination of the fluid, lubricants, air line additives, or oil systems.
- Damage attributable to accident, abuse, neglect.
- Stripped splines or keyways on drive shaft.
- Incorrect mounting of external gears, pulleys, etc.
- Operating beyond the recommended maximum speeds, pressure, temperatures, voltage or humidity or below the recommended voltage.
- Improper filtration.

- Repairs by unauthorized service personnel.
- Use of the product in a manner or purpose for which it was not designed or intended by Seller.
- Misalignment, mis-wiring, high vibration.
- Ordinary wear and tear.

Whenever possible, each provision of the foregoing warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this warranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this warranty.

ARTICLE SEVEN – PATENTS

7.1 Seller warrants that the Goods shall not infringe any U.S. patent.
If Buyer provides timely notice, information and assistance, Seller shall indemnify and defend Buyer from and against any claimed infringement which would constitute a breach of this warranty. In the event the Goods are found to infringe any U.S. patent, Seller shall at its option procure for Buyer the right to continue use, replace the Goods with non-infringing goods, modify the Goods so that they are non-infringing or upon return of the Goods to Seller, refund the purchase price less reasonable depreciation. Seller grants no license, express or implied, other than the right of Buyer to use the Goods.

7.2 Seller makes no warranty with respect to and shall not be liable for, any infringement relating to or arising out of:
a) Goods manufactured to Buyer's design or specifications, or
b) Use of the Goods in conjunction with any other product not furnished by Seller or in a combination not furnished by Seller. With respect to any claimed infringements arising out of circumstances described in this Section 7.2 Buyer shall indemnify and defend Seller against any and all loss, damage, costs and expenses including reasonable attorney fees.

7.3 Buyer agrees to hold Seller harmless from any liability of Seller for infringement of patents by reason of manufacturing according to Buyer's design or by reason of the incorporation of said part in a more comprehensive assembly than sold by the Seller.

ARTICLE EIGHT – CONFIDENTIALITY (not applicable if the parties have previously executed a written confidentiality agreement)

8.1 Contractual Relationship. Buyer shall not, without first obtaining Seller's written consent, disseminate, by advertising or promotional materials or otherwise, the fact that Seller has furnished or has contracted to furnish Buyer with the Items covered by this Agreement nor, except as is necessary for the performance of this Agreement, shall Buyer disclose any of the terms of or details connected with this Agreement to any third party.

8.2 Disclosure and Use of Confidential Information. Seller and Buyer will hold all Confidential Information provided to each of them by the other party or procured or developed utilizing Confidential Information obtained by working at or about the other party's facilities in confidence and shall not disclose such Confidential Information to (a) any employee, agent or contractor of such receiving party not necessary to complete performance under this Agreement or (b) to any other third party. Seller and Buyer shall use the Confidential Information obtained from the other party solely for the purposes of completing performance under this Agreement. Seller and Buyer shall be responsible for breach of this Section 8.2 by their respective employees, agents or contractors as if such breach had been committed by such party.

8.3 Exceptions Regarding Confidentiality. The provisions of Section 8.2 hereof shall not apply to any Confidential Information which (a) was in the possession of the receiving party prior to the date of this Agreement as evidenced by written documentation in such party's possession, (b) through no act or omission on the part of the receiving party is or becomes part of the public knowledge or literature, (c) is provided to the receiving party by third parties under no contractual or legal confidentiality obligation to party owning such information, provided, however, that Confidential Information disclosed or operational results derived hereunder shall not be deemed to be a part of the public knowledge or literature or in the possession of third parties merely because it is embraced by more general information available to the public or by more general information in the possession of Seller or Buyer, or (d) is independently arrived at without reference to the Confidential Information.

8.4 Return of Confidential Information. All Confidential

Information, including all copies or other reproductions thereof, whether in written, printed, or computer readable form (except those contained in computer backup systems), made by Seller or Buyer in connection with their respective performance under this Agreement, shall be returned to Buyer or Seller, as the case may be, promptly upon written request therefore, provided, that Seller shall have the right to retain a copy of the final "as built" drawings for the purpose of assisting Seller with any after-sale warranty or service work it may be called upon to perform. Such request may be made at any time during or within six (6) months after completion of Seller's performance hereunder.

8.5 Notice of Compelled Disclosure. In the event that Seller or Buyer is requested pursuant to or required by applicable law or regulation or compelled by legal process to disclose any Confidential Information, such party will immediately provide the other with telephonic and written notice thereof and fully cooperate with and assist in obtaining a protective order to either prevent such disclosure or permit such disclosure only upon such terms and conditions regarding the confidentiality thereof as is acceptable to the owner of such Confidential Information.

8.6 Intellectual Property Rights. Neither Seller nor Buyer shall, by express grant or by implication, be deemed to have been granted any right or license under any U.S. or foreign patent or invention rights, trademark, trade name, copyright, trade secret, or other intellectual property rights owned or controlled by or licensed to the other party with regard to Confidential Information.

8.7 Survival of Obligations. The obligations of Seller and Buyer under this Article Seven shall be in force for a period of two (2) years after the date of this Agreement and will survive the cancellation, termination or completion of this Agreement.

ARTICLE NINE – ACTIVITIES ON THE END-USER PREMISES

9.1 Indemnity. Seller shall indemnify, hold harmless and defend Buyer including its agents and employees from and against all claims, damages, losses, and expenses (excluding attorneys' fees) arising out of or resulting from the performance of the work or services, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, and (b) is caused in whole by any intentional or negligent act or omission of the Seller, or its employees, agents or contractors, and (c) is not caused by any intentional or negligent act or omission of Buyer, or its employees, agents or contractors. In any and all claims against any indemnified party by any employee of the Seller or any one acting on behalf of the Seller, or by any person directly or indirectly employed by the Seller or anyone acting on behalf of the Seller, the indemnification obligation under this clause shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Seller or anyone acting on behalf of the Seller under worker's compensation acts, disability benefit acts, or other employee benefit acts.

9.2 Insurance. Unless otherwise mutually agreed to, Seller and Buyer shall each carry and maintain during performance of work or services contracted under any purchase order, the following insurance with minimum limits as specified for each type of insurance:

(a) Worker's compensation insurance in accordance with statutory requirements and employer's liability insurance in accordance with statutory requirements.

(b) Commercial general liability insurance covering bodily injury and property damage, including products and completed operations coverage with a minimum of $2,000,000 per occurrence and in the aggregate.

(c) Automobile liability insurance covering bodily injury and property damage including coverage for owned, hired, and non-owned automobiles with a minimum of $2,000,000 combined single limit.

Each party shall furnish the other party certificates showing that such insurance is in full force and effect prior to commencing the performance of work or services contracted under any Purchase Order from Buyer, and each Party shall provide the other Party with written notice within a reasonable time after receipt by such Party of notice from its insurer that any coverage required hereunder is being canceled or materially modified. All such insurance shall be endorsed to provide contractual liability.

(d) The sufficiency of Seller's insurance coverages shall be deemed to be accepted by Buyer at such time as Buyer initiates payment to Seller, and Buyer shall be deemed to have waived any claims

against Seller related to Seller's obligation to obtain insurance compliant with the contract.

9.3 Buyer's All Risk Insurance. Seller shall provide reasonable protection for its job site material and work, but shall be liable for losses only to the extent caused by Seller's negligence. It is understood and agreed to that Buyer's all-risk insurance (or that of the property owner where the Equipment is located) includes coverage for the full value of loss or damage to Seller's work in place, for its stored material, and for its material in transit.

9.4 Additional Insureds. Seller will not be required to add additional insureds to any insurance policy, nor to waive subrogation for claims covered by workers' compensation or commercial general liability insurance. Seller shall maintain insurance with coverage and limits only as provided by Seller's existing insurance program evidenced by its certificate of insurance available on request.

9.5 Temporary Site Facilities. Except as specifically required by the Work and specifications included in this bid proposal, Buyer shall furnish all temporary site facilities, including but not limited to site access, storage space, hoisting facilities, guard rails, covers for floor, roof and wall openings, security, parking, safety orientation, break and lunch facilities, toilet and wash facilities, drinking water and other water facilities, electrical service, telecommunication service, lighting, heat, ventilation, weather protection, fire protection, and trash and recycling services.

9.6 Damage by Other Parties. Seller is not responsible for damage to its Work by other parties, and any repair work necessitated by such damage is extra work. All materials shall be furnished in accordance with the respective industry tolerance of color variation, thickness, size, finish, texture and performance standards. All warranty claims for Seller's work must be received by Seller within the warranty period, and Seller must be provided a reasonable opportunity to inspect and make corrections, or such warranty claims are barred.

9.7 Documents, Materials, Work, Etc. of Third Parties. Seller's obligation to examine documents, the project site, and materials and work furnished by others is limited to notification to Buyer of any defects or deficiencies that a person in the trade of Seller would discover by reasonable visual inspection. No testing beyond reasonable visual inspection shall be required. Seller is entitled to rely on the accuracy and completeness of plans, specifications, and reports of site conditions provided to Seller. Any design services provided by Seller will be reviewed by Designer to assure acceptability when integrated with the entire work. Buyer is entitled to rely on the accuracy and completeness of design services or certifications provided by Seller only to the extent that design responsibility is specifically delegated to Seller by agreement in writing and all design and performance criteria are furnished to Seller.

9.8 Safety Barriers and Fines. Seller shall not be liable for erecting or maintaining project safety barriers unless expressly and specifically agreed to be part of the Seller's Work. Each party to the Agreement shall be liable for any safety violation fines or penalties imposed upon it, regardless of the cause of the fine or penalty.

9.9 Backcharge Claims. No backcharge or claim of Buyer for services shall be valid except by an agreement in writing by Seller before the work is executed. In the event of Seller's failure to meet any requirement of this Agreement, Buyer shall notify Seller of such default, in writing, and allow Seller reasonable time to correct any deficiency before incurring any costs chargeable to Seller. No backcharge shall be valid unless agreed upon in writing and billing is rendered no later than the 15th day of the month following the charge being incurred. Furthermore, any payments withheld under a claim of Seller default shall be reasonably calculated to cover the anticipated liability and all remaining payment amounts not in dispute shall be promptly paid.

9.10 Closeout Documentation. Buyer will not require any contract closeout procedures or any forms that have not been provided to and specifically accepted in writing by Seller prior to signature of the Agreement.

ARTICLE TEN – COMPLIANCE WITH LAWS

10.1 Governmental Authorizations, Approvals, Permits and Licenses. Unless otherwise agreed, Buyer shall apply for, pay for and obtain on a timely basis all federal, state, local and municipal authorizations, approvals, permits and licenses which may be required in connection with the installation and operation of the Equipment. Buyer and Seller will assist each other in every manner reasonably possible in securing such authorizations, approvals, permits and licenses.

10.2 Government Procurement Laws and Regulations. If the Goods or Services provided are purchased under

a government contract or sub-contract, Buyer shall promptly notify Seller (prior to Seller's Quotation) of the provisions of any government procurement laws and regulations. To the fullest extent permitted by law, Buyer agrees to indemnify Seller and hold Seller harmless from any and all associated costs incurred by Seller, and any and all penalties imposed upon Seller in order for Seller to comply with government flow-down provisions.

10.3 EXPORT CONTROLS.

10.3.1 BRUS and Buyer acknowledge and agree that the commodities, software, technology and/or services (the "Items") covered by Buyer's order may be subject to export controls imposed by the United States Government under various federal laws including, but not limited to, the Export Administration Act of 1979 ("EAR"), the International Traffic In Arms Regulations ("ITAR"), and Office of Foreign Asset Controls ("OFAC"), as may be amended or any successor legislation, and the regulations promulgated thereunder, (collectively the "Regulations"). Buyer agrees to advise Seller (prior to Seller's Quotation and/or Order Acknowledgement) of the applicability of such Regulations to the Equipment or Services to be provided, and to the fullest extent permitted by law, Buyer agrees to indemnify Seller and hold harmless Seller from any and all associated costs incurred by Seller, and any and all penalties imposed upon Seller for Seller's unintentional violation of the Regulations due to Buyer's failure to timely notify Seller. Buyer agrees not to export or re-export any Items without complying with the Regulations and Buyer shall be solely responsible for such compliance with the Regulations.

10.3.2 Buyer acknowledges that any diversion contrary to the Regulations by Buyer or any subsequent party of any such Items provided by BRUS is prohibited and Buyer shall be solely responsible for any diversion which is contrary to the Regulations.

10.3.3 Buyer further certifies that the Items: (a) are not intended to be used for any purpose prohibited by the Regulations, including, without limitation, terrorism, nuclear related activities or chemical/biological weapons or missiles; (b) are not intended to be released, shipped or re-exported, either directly or indirectly, to any other destination to which the United States has embargoes, restrictions, prohibited exports and/or re-exports of Items to countries as designated in the Regulations, and (c) are not intended to be released, shipped or re- exported, either directly or indirectly, to any persons identified on any sanctioned parties lists published by a US Government Agency, including but not limited to, the lists published by the U.S. Department of Commerce, Bureau of Industry and Security; US Department of Treasury, OFAC and US State Department.

10.3.4 This Paragraph shall survive any termination or expiration of Buyer's order.

ARTICLE ELEVEN – MISCELLANEOUS

11.1 Notices. All written notices, requests, demands, consents, certificates or other communications required or permitted to be given hereunder shall be sufficiently given when mailed by (a) certified mail, return receipt requested, postage prepaid, (b) commercial overnight delivery courier, fees prepaid, or (c) facsimile transmission and confirmed by method (a) or (b) above, addressed to Buyer or Seller, as the case may be, at their respective addresses set forth on the first page of this Agreement and below. Either party may, by like notice at any time and from time to time, designate a different address to which notices shall be sent.

11.2 Assignment. The rights of Seller under this Agreement may not be assigned or otherwise transferred by Seller to any successor, assignee, or any surviving, resulting or transferee corporation, partnership or other business entity without the prior written permission of Buyer; provided, however, that all obligations of Seller hereunder shall be enforceable by Buyer against any such successor, assignee or surviving, resulting or transferee corporation, partnership or other business entity without regard to the granting or withholding of Buyer's permission to such assignment or other transfer. Seller may assign monies due and to become due under this Agreement. Buyer shall not be entitled to assert against the assignee thereof any rights, claims, and defenses of every type (including, without limitation, rights of setoff, recoupment and counterclaim) which Buyer could assert against Seller, whether arising prior or subsequent to such assignment. The rights of Buyer under this Agreement may not be assigned or otherwise transferred by Buyer to any successor, assignee, or any surviving, resulting or transferee corporation, partnership or other business entity without the prior written permission of Seller.

11.3 Waiver. No waiver shall be implied by a party's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege granted to such party hereby. No express waiver by either party shall be construed as waiving any breach hereunder or the performance of any of the terms or conditions hereof not specified in the express waiver, and then only for the time and to the extent stated therein. One or more waivers of any covenant, term or condition hereof shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

11.4 Severability. If any covenant, term or condition hereof or the application thereof to any circumstance or person shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, the remaining valid and enforceable covenants, terms and conditions hereof and the application of such invalid or unenforceable covenant, term or condition to circumstances or persons other than those as to which it has been held invalid or unenforceable shall not be affected thereby and each remaining valid and enforceable covenant, term and condition shall be valid and enforceable to the fullest extent permitted by law.

11.5 Goods and Services. The terms and conditions contained herein shall be applicable to sales of goods only, to mixed sales of goods and services (regardless of which factor predominates), and to sales of services only and, in either of the latter two cases, the term "Equipment as used herein shall be construed as including all Services rendered hereunder, unless and only to the extent that the context clearly indicates otherwise.

11.6 Rules of Construction. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and words in the plural shall be held to include the singular, unless and only to the extent that the context clearly indicates otherwise.

11.7 Counterparts. This Agreement may be executed in any number of Counterparts, each of which shall be an original and all of which taken together shall constitute but one and the same instrument and any of the parties hereto may execute this Agreement by signing any counterpart.

11.8 Captions. All captions contained in this Agreement are for the convenience of the parties and shall not be deemed or construed as in any way limiting or extending the language of the provisions to which they refer.

11.9 Non-Solicitation. During the term of this Agreement, no organizational unit of either party to this Agreement shall solicit, directly or indirectly, employees of the other party's organizational unit without the other party's prior written authorization.

11.10 Recoupment. In the event that from time to time Seller may owe credits, refunds, reserves, monies on open account, or other monies to the Buyer, such indebtedness shall be deemed to be created from this Agreement and Seller shall have the right of recoupment with respect to such credits, refunds, reserves or other monies.

ARTICLE TWELVE – DISPUTE RESOLUTION

12.1 Settlement of Disputes. Any dispute that arises under or is related to this Agreement that cannot be settled by mutual agreement of the parties may be decided by a court of competent jurisdiction in accordance to Paragraph 12.2 below. In the event of a dispute between Buyer and a third party to the extent that the dispute pertains to Items furnished by Seller, Seller agrees to assist Buyer at Buyer's expense.

12.2 Governing Law/Jurisdiction. This Agreement shall be governed and construed according to the internal laws of the Commonwealth of Pennsylvania without giving effect to its conflict of law rules that would act to apply the laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (C.I.S.G.) shall not apply. The parties agree that all actions and proceedings in connection herewith shall be brought only in the state, federal or local courts within Lehigh County, Pennsylvania, or such other locale as Seller may select; and the parties hereby agree to submit to the jurisdiction of such courts for purposes of such actions. The prevailing party in any litigation to enforce any provision of this Agreement or to collect amounts owing under this Agreement or damages shall be entitled to recover their actual attorney's fees, costs and expenses incurred, without regard to any court schedule of fees that may exist. DUE TO THE SPECIALIZED NATURE OF SELLER'S EQUIPMENT, EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.

12.3 Lien, Bond and Other Similar Rights Preserved. Notwithstanding any provision to the contrary, Seller may take all steps reasonably necessary to preserve and enforce all legal rights including but not limited to mechanic's liens, stop notices, payment bonds, trust fund, reclamation, prompt payment and similar rights.

IN WITNESS WHEREOF, the parties have caused this Engineered Systems Sales Agreement to be duly executed and delivered as of the date specified.

SELLER: BOSCH REXROTH CORPORATION

By: _____

Its: _____

Date: _____

BUYER: _____

By: _____

Its: _____

Date: _____

Address: _____

Bosch Rexroth Corporation
Hydraulics
2315 City Line Road
Bethlehem, PA 18017
U.S.A.
Telephone (610) 694-8300
Facsimile (610) 694-8467
www.boschrexroth-us.com

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