

# WENDT CORPORATION TERMS AND CONDITIONS OF SALE - NEW EQUIPMENT

**1. Terms and Conditions Binding: Entire Agreement.** The quotation (the "Quotation") of WENDT CORPORATION ("WENDT") together with these Terms and Conditions of Sale (these "Terms and Conditions") and all other attachments to the Quotation (collectively, the "Agreement") is an offer to sell equipment and/or spare parts and any attendant services to Buyer. WENDT's acceptance of the Agreement is expressly conditioned upon Buyer's acceptance of these Terms and Conditions. No amendment of these Terms and Conditions (whether such amendment is inconsistent with, different from or in addition to, these Terms and Conditions) will be binding upon WENDT unless specifically agreed to in a writing signed by WENDT. Any WENDT failure to object to any provisions contained in any purchase order or other communication from Buyer to WENDT shall not be construed as an acceptance of such provisions nor as a waiver of these Terms and Conditions. Any reference by WENDT in any communication with Buyer to any purchase order from Buyer shall be for reference purposes only and will not serve to amend the Agreement in any way. No action, inaction or course of dealing by or on behalf of WENDT shall be deemed an acceptance of, or agreement with, any term in any other document relating to the subject matter herein to the extent same is inconsistent with the terms of the Agreement, and Buyer hereby waives all right to so claim. Buyer may accept the offer contained in the Agreement by executing and delivering to WENDT a copy of the Quotation. There shall be no agreement between WENDT and Buyer until the Agreement has been duly executed by both Parties. The Agreement constitutes the entire agreement between WENDT and Buyer regarding the subject matter herein and supersedes all prior and contemporaneous agreements between such Parties, whether written or oral, with respect to such subject matter.

**2. Delivery Terms; Delivery Dates; Title and Risk of Loss; Inspection and Damage.** Delivery terms for the Equipment are as follows: (a) for all MTB and TOMRA stand-alone equipment: (1) if the "Delivery Destination" as set forth in the Quotation is in the United States of America ("U.S."), DDP "Delivery Destination" (Incoterms 2000); and (2) if the "Delivery Destination" as set forth in the Quotation is in any other country, CIF "Delivery Destination" (Incoterms 2000); and (b) for all equipment other than MTB and TOMRA stand-alone equipment, Ex Works "Delivery Destination" (Incoterms 2000) as set forth in the Quotation. Title and risk of loss to the Equipment passes from WENDT to Buyer at the time the Equipment has been delivered to Buyer pursuant to this **Section 2**. If WENDT is not responsible for freight costs pursuant to this **Section 2**, Buyer may request WENDT to prepay freight, in which case Buyer shall pay WENDT a handling charge equal to 10% of total freight charges; provided, however, that any such prepayment by WENDT shall not in any way affect title or risk of loss to the Equipment as set forth in this **Section 2**. All delivery dates in the Quotation are approximate. Time is not of the essence with respect to the Agreement. Buyer shall inspect the Equipment upon receipt thereof and immediately report any shortage or damage to WENDT and the carrier. Buyer shall file any claims for any shortage or damage with the carrier. If Buyer fails to report any claim for shortages or damage within Ten (10) days after Buyer's receipt of the Equipment, such failure shall constitute a waiver of Buyer's rights of inspection and rejection.

**3. Technical Documentation.** Timely performance by WENDT is contingent upon Buyer's supplying to WENDT, when needed, all required technical information, including, without limitation, drawing approval and all required commercial documentation. Any technical documentation,

drawings, brochures or catalogs provided to Buyer by WENDT are intended for guidance only and are not binding unless expressly stated otherwise. WENDT reserves all rights in all such documentation. Without WENDT's prior written consent, any such documentation shall not be: (a) disclosed, in whole or in part, to any other Person; (b) used for any purpose other than those for which they have been provided to Buyer; or (c) used for the manufacture of any duplicate or similar equipment or parts by Buyer or any other Person.

**4. Installation; Commissioning; Acceptance.** (a) Installation - Upon Buyer's receipt of the Equipment, Buyer shall complete all of its installation responsibilities provided by WENDT, including, without limitation, electrical, hydraulic and mechanical assembly of all components and connections. Upon Buyer's request, and at Buyer's sole cost and expense, WENDT will provide reasonably requested assistance to Buyer as to its installation responsibilities. Upon Buyer's completion of all of its installation responsibilities, Buyer shall provide notification to WENDT that all such responsibilities are complete and that the Equipment is ready for Commissioning (the "Installation Completion Notice"). If upon WENDT's arrival at Buyer's site, WENDT determines, in its sole discretion that Buyer has not completed all of its installation responsibilities, any subsequent visits to Buyer's site to complete the Commissioning will be at Buyer's sole cost and expense in accordance with the Schedule of Charges attached to the Quotation ("Schedule of Charges"). (b) Commissioning - After WENDT's receipt of the Installation Completion Notice, a WENDT representative will perform start-up, final tuning and inspection of the Equipment and will train Buyer's designated personnel in the safe and proper operation of the Equipment (the "Commissioning"). WENDT shall promptly notify Buyer in writing of the completion of the Commissioning, including any non-material exclusions thereto (the "Commissioning Notice"). Completion of the Commissioning shall be determined by WENDT, in its sole discretion. Only upon completion of the Commissioning by WENDT and WENDT's delivery of the Commissioning Notice to Buyer, shall Buyer have the right to use the Equipment, and under no circumstances is Buyer authorized to operate the Equipment prior to completion of the Commissioning, except for limited testing purposes. If Buyer operates or otherwise uses the Equipment prior to completion of the Commissioning by WENDT (except for limited testing purposes): (1) WENDT shall have no further obligation for Commissioning the Equipment, including training Buyer personnel; and (2) the Warranty shall be null and void and of no effect, and the Equipment shall be deemed to have been purchased "AS IS, WITH ALL FAULTS". (c) Acceptance - Unless Buyer shall provide WENDT with written notice to the contrary within Thirty (30) days after completion of the Commissioning, Buyer shall be deemed to have acknowledged and agreed to the following: (1) the Equipment has been fully and properly installed, including all necessary safety equipment, devices and guards, and the Commissioning has been completed by WENDT in full compliance with all terms and conditions of the Agreement; (2) the Equipment has been properly labeled with all appropriate warning/safety labels and notices and any additional warning labels that Buyer may deem more appropriate for its workforce (including labels in languages other than English) shall be the sole responsibility of Buyer; (3) Buyer has had a reasonable opportunity to inspect, has fully inspected and has approved the Equipment; (4) the Equipment is fully conforming with the terms of the Agreement; (5) WENDT has provided all instruction and training in the proper and safe operation, use, care, maintenance and repair of the Equipment, WENDT shall have no further responsibility to



7.0

# WENDT CORPORATION TERMS AND CONDITIONS OF SALE - NEW EQUIPMENT

provide any further instruction or training with respect to the Equipment, and any such further instruction or training shall be the sole responsibility of Buyer; and (6) WENDT has fully complied with all other terms of the Agreement.

**5. Payment Terms.** Subject to this **Section 5**, all payment terms are set forth in the Quotation. Unless otherwise stated, all payments shall be in United States Dollars. Any deposit set forth in the Quotation is payable in consideration of WENDT's administrative and other expenses incurred in entering into the Agreement and is nonrefundable. Except as set forth in **Section 4**, the Commissioning cost is set forth in the Quotation. All attendant services other than the Commissioning will be provided by WENDT in accordance with the Schedule of Charges. Notwithstanding anything to the contrary contained herein, if Buyer fails to comply with any payment terms, then the Warranty shall be null and void and of no effect, and the Equipment shall be deemed to have been purchased "AS IS, WITH ALL FAULTS".

**6. Cancellations.** The Agreement is not subject to change or cancellation by Buyer. If WENDT approves a cancellation, Buyer shall pay all of WENDT's costs, losses and anticipated profits relating to such cancellation. If Buyer fails to comply at any time with any payment terms in the Agreement and such failure to pay continues for Thirty (30) days (provided WENDT has given Buyer notice of such failure to pay), then WENDT shall have the right to cancel the Agreement upon prior notice to Buyer and upon such cancellation shall have no further duties or obligations to Buyer hereunder.

**7. Fire & Explosion Protection.** Some Equipment may be capable of handling materials that are flammable and/or explosive. Appropriate fire and explosion detection and suppression systems will vary depending on materials processed and handled with the Equipment by Buyer. Buyer is solely responsible selecting and installing all fire and explosion detection and suppression systems utilized in connection with the Equipment, and Buyer represents and warrants to WENDT that prior to commencement of Commissioning, all such systems that are reasonably necessary to operate the Equipment have been properly installed.

**8. No Removal of Safety Devices.** Buyer covenants that under no circumstances will Buyer remove any safety equipment, devices or guards or any warning/safety label or notice from the Equipment while the Equipment is in operation.

**9. Ownership of Technology/Improvements.** WENDT shall retain exclusive ownership of all right, title and interest in and to, all WENDT Technology and all Improvements. WENDT's sale of the Equipment hereunder does not grant or convey to, or confer upon, Buyer or any other Person any license of any kind, express or implied, under any WENDT intellectual property rights.

**10. Confidentiality.** At all times after the Effective Date, Buyer shall: (a) maintain the Confidential Information in strict secrecy by utilizing the same degree of care as Buyer utilizes for maintaining the confidentiality of its own most highly confidential or proprietary information (which in no event shall be less than reasonable care); (b) not use the Confidential Information in any way, in whole or in part, except as is necessary for Buyer to operate, maintain or repair the Equipment and for no other purpose of any kind; (c) not publish or disclose the Confidential Information in any way, in whole or in part, to any Person; and (d) not reverse engineer, disassemble or decompile the Equipment in any way.

**11. Indemnification.** (a) By Buyer – (For purposes of the Agreement, "**Damages**" means the aggregate of any and all claims, losses, costs, judgments, deficiencies, penalties, obligations, liabilities, damages, fines and expenses of any kind (including, without limitation, any special, incidental, consequential, punitive or any other indirect damages, and all reasonable attorneys' fees and disbursements).) Buyer agrees to indemnify, defend and hold harmless WENDT and its affiliates, and their respective directors, officers, employees, shareholders and agents (collectively, the "**WENDT Indemnitees**") with respect to the aggregate of all Damages incurred or suffered by any WENDT Indemnitees arising out of or relating to: (1) any breach of, or default in the observance or performance of any agreement made by Buyer in the Agreement or the failure of Buyer to fulfill any other obligation that it is required to perform or observe in the Agreement; (2) any breach of or false or fraudulent, representation or warranty made by Buyer in the Agreement; (3) any improper handling, installation, maintenance or care, improper use, use for any purpose or application for which it was not designed or intended, abuse or neglect, of the Equipment, by Buyer or any other Person (other than WENDT or WENDT authorized personnel); (4) any removal of any necessary safety equipment, device or guard or any warning/safety label or notice from the Equipment, by Buyer or any other Person (other than WENDT or WENDT authorized personnel); (5) any alteration, modification, connection or repair of the Equipment, by Buyer or any other Person (other than WENDT or WENDT authorized personnel); (6) any addition of any part, component or accessory (or any use thereof) that is: (a) added by Buyer or any other Person (other than WENDT or WENDT authorized personnel); or (b) not supplied or approved in writing by WENDT; (7) any use or operation of the Equipment by Buyer or any other Person (other than WENDT or WENDT authorized personnel) not in accordance with any Equipment storage, operation, maintenance or repair instructions furnished by WENDT or any generally accepted industry practice; (8) any use or operation of the Equipment by Buyer or any other Person (other than WENDT or WENDT authorized personnel) prior to completion of the Commissioning; and/or (9) Buyer's failure to adequately train its staff in the operations and maintenance of the Equipment. (b) By WENDT for Infringement - WENDT hereby represents and warrants, to WENDT's actual knowledge, that: (1) neither the Equipment nor any of WENDT's Technology utilized in the Equipment infringes any patent, patent application, license, trade secret, know-how, trademark or any other intellectual property right of any kind, of any Person or any Applicable Law; or (2) constitutes any kind of wrongful use of any confidential information or proprietary information of any Person. Subject to **Section 11(c)**, WENDT agrees to indemnify, defend and hold harmless Buyer with respect to the aggregate of all Damages (excluding any special, incidental, consequential, punitive or any other indirect damages) incurred or suffered by Buyer arising out of or relating to any breach of or false or fraudulent representation or warranty made by WENDT contained in the foregoing sentence. (c) Limitation - WENDT shall have no liability under **Section 11(b)** to indemnify, defend or hold harmless Buyer to the extent that any Damages incurred or suffered by Buyer arise out of or relate to: (1) any addition of any part, component or accessory (or any use thereof) that is: (a) added by Buyer or any other Person (other than WENDT or WENDT authorized personnel); or (b) not supplied or approved in writing by WENDT; (2) use of the Equipment and/or any component thereof in any manner or for any purpose or application for which it was not designed or intended; (3) use of the Equipment and/or any component thereof for the manufacture of products in respect of which Buyer needs and fails to obtain a third party license, consent or permission (other than any third party license, consent or permission obtained by WENDT and granted to Buyer in the Agreement); (4) any alteration, modification, connection or repair of the Equipment and/or any component thereof by Buyer or any other Person (other than WENDT or WENDT authorized personnel); or (5) any aspect of the design, manufacture and/or method of operation of the Equipment and/or any component thereof in



7.0

# WENDT CORPORATION TERMS AND CONDITIONS OF SALE - NEW EQUIPMENT

accordance with any drawings, specifications, instructions and/or other materials issued by Buyer to WENDT.

**12. Limited Warranty.** (a) Scope - WENDT warrants solely to Buyer of the Equipment that for a period of One (1) Year commencing on the date of Buyer's receipt of the Commissioning Notice (but in no event exceeding Ninety (90) days from the date the Equipment is shipped or ready to be shipped by WENDT from Tonawanda, New York or the place of manufacture) or for Two Thousand (2,000) operating hours of the Equipment, whichever occurs first ("Warranty Period"), the Equipment will be free from material defect in material and workmanship, under normal and intended use ("Warranty"). If the Equipment or any component thereof is manufactured by a Person other than WENDT, then, in addition to the Warranty, Buyer shall also be entitled to the benefit of the terms and conditions of such other manufacturer's warranty and WENDT will assign, as necessary, all such warranties to Buyer to the extent such warranties are assignable. (b) Remedies for Failure to Comply with Warranty - WENDT reserves the right, in its sole discretion, to verify any Warranty claim by Buyer. If any Equipment is determined by WENDT to not conform with the Warranty during the Warranty Period and if Buyer gives WENDT written notice of the Equipment defect in material or workmanship within One (1) month after such defect occurs, then Buyer's sole and exclusive remedy and WENDT's sole obligation shall be that WENDT will, at its option and in its sole discretion, and at its sole cost and expense, either: (1) correct all such defects in material and/or workmanship by repairing, replacing or modifying the Equipment to comply with the Warranty; or (2) refund the purchase price paid for the piece or item of defective Equipment. Any such repair, replacement or modification of the Equipment, in whole or in part, shall not in any way extend the Warranty Period or the Warranty. Buyer shall be required to: (i) obtain from WENDT a prior written return material authorization number (which shall be included when the Equipment is returned to WENDT); and (ii) return the Equipment to the point of manufacture, all at Buyer's sole cost and expense. Notwithstanding anything to the contrary contained herein, should this exclusive remedy be finally determined by a court of competent jurisdiction to fail of its essential purpose, then WENDT's liability to Buyer for the Equipment shall be limited to the aggregate purchase price paid by Buyer for the piece or item of defective Equipment.

**13. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL WENDT HAVE ANY LIABILITY OF ANY KIND TO BUYER OR ANY OTHER PERSON, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR ANY OTHER THEORY OF LAW, FOR: (a) INDEMNITY (OTHER THAN AS EXPRESSLY PROVIDED IN **SECTION 11(b)**); (b) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST TIME AND CONVENIENCE, COST OF A PRODUCT RENTAL, LOST REVENUES, LOSS OF USE, INTEREST OR CARRYING CHARGES ON INVESTMENT, EXPENSES ARISING FROM COSTS OF CAPITAL, REMOVAL OR REINSTALLATION, TRAVEL OR LODGING, UNDER-UTILIZATION OF LABOR, EQUIPMENT OR FACILITIES, OR ANY DAMAGES OF ANY KIND COVERED BY INSURANCE HOWEVER CAUSED (EVEN IF WENDT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE); OR (c) ANY OTHER LOSSES, DAMAGES OR INJURIES OF ANY KIND TO BUYER OR ANY OTHER PERSON, INCLUDING, WITHOUT LIMITATION, INJURY TO ANY PERSON OR ANY PROPERTY; RESULTING FROM OR ARISING OUT OF, WHETHER DIRECTLY OR INDIRECTLY, ANY OF THE FOLLOWING (PROVIDED, HOWEVER, (3) BELOW IN THIS **SECTION 13** SHALL NOT APPLY WITH RESPECT TO **SECTION 13(c)** ABOVE): (1) ANY ACT OR OMISSION OF ANY KIND HEREUNDER BY BUYER OR ANY OTHER

PERSON; (2) ANY USE OF THE EQUIPMENT (OR ANY COMPONENT THEREOF) BY BUYER OR ANY OTHER PERSON; (3) ANY PERFORMANCE, NONPERFORMANCE OR DELAY IN PERFORMANCE BY WENDT OF ANY OF ITS OBLIGATIONS UNDER THE AGREEMENT; OR (4) ANY BUYER REPRESENTATION, WARRANTY OR GUARANTEE RELATED TO SUBSECTIONS (1)-(3) ABOVE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL: (I) THE AGGREGATE COST BORNE BY WENDT FOR ANY REPAIR, REPLACEMENT OR MODIFICATION OF ANY EQUIPMENT EXCEED THE EQUIPMENT PURCHASE PRICE PAID BY BUYER FOR SUCH EQUIPMENT; AND (II) WENDT'S AGGREGATE LIABILITY TO BUYER AND ANY THIRD PARTY FOR LOSSES OR DAMAGES OF ANY KIND ARISING OUT OF OR PURSUANT TO THE AGREEMENT OR THE USE OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, INJURY TO ANY PERSON OR PROPERTY, WHETHER BASED ON CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY, EXCEED THE AGGREGATE PURCHASE PRICE PAID TO WENDT IN GOOD FUNDS FOR THE EQUIPMENT THAT IS SUBJECT TO THE APPLICABLE CLAIM.

**14. Security Agreement.** If WENDT and Buyer agree in the Quotation that the Equipment shall be delivered to Buyer prior to payment in full of all amounts due and owing to WENDT for the Equipment (any such amounts due and owing shall be hereinafter referred to as the "Purchase Money Obligation"), then to secure the Purchase Money Obligation, Buyer hereby grants to WENDT a security interest in each item of Collateral. For purposes of this **Section 14**, "Collateral" means the Equipment, wherever located and whether now owned or hereafter acquired, together with all present and future attachments, accessions, replacements, additions, products, and proceeds (including insurance proceeds) thereof. Buyer hereby authorizes WENDT to file such financing statements as WENDT, in its sole discretion, may determine to be desirable to perfect such WENDT purchase money security interest in the Collateral, and Buyer agrees to fully cooperate with WENDT and to execute any and all documents and instruments reasonably requested of Buyer to perfect such WENDT security interest. Buyer hereby irrevocably appoints each WENDT officer as its attorney-in-fact for the purpose of executing financing statements or similar documents to implement this provision. WENDT may at any time notify any other Person claiming a security interest in Buyer's assets or inventory of this purchase money security interest. Buyer will pay when due the Purchase Money Obligation to WENDT and will repay immediately on demand the cost of filing financing statements and any renewals or extensions thereof incurred by WENDT in connection with the Purchase Money Obligation. Upon Buyer's failure to pay the Purchase Money Obligation when due, WENDT shall have the right to and may pursue any and all legal or equitable rights or remedies available to a secured creditor under the Uniform Commercial Code.

**15. Exclusive Remedy.** **Section 11** states the entire liability of WENDT, and the sole and exclusive remedy of Buyer, solely with respect to infringement claims relating to the Equipment and WENDT's Technology. Except as set forth in **Section 11**, the Warranty set forth in **Section 12** is: (a) the sole and exclusive remedy of Buyer (and of any other Person); (b) in lieu of all other remedies that may be available to Buyer (or any other Person); and (c) WENDT's sole obligation; arising out of or with respect to the Equipment or any defect therein (regardless of any legal theory upon which any such claim may be based).



7.0

# WENDT CORPORATION TERMS AND CONDITIONS OF SALE - NEW EQUIPMENT

**16. Severability.** If any provision herein is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, legal and enforceable to the maximum extent permitted by Applicable Law. The invalidity, illegality or unenforceability of any part of the Agreement shall not render invalid the remainder of the Agreement.

**17. Subrogation Waiver.** WENDT, Buyer and any party claiming through either Party each releases the others from all Damages related to the Equipment or services provided under the Agreement regardless of the cause thereof, to the extent such Damages are covered by any insurance carried by the Party suffering such Damages.

**18. Taxes.** The purchase price set forth in the Quotation shall be paid without deduction or withholding for any Taxes levied with respect to such purchase price. All Taxes, when applicable, will be the sole obligation of Buyer and will be paid by Buyer directly to the applicable Government Authority unless prohibited by Applicable Law, in which case Buyer shall timely pay such Taxes to WENDT for remission to the appropriate Government Authority.

**19. Credit Sales.** WENDT reserves the right to withdraw credit and require full payment before production, shipment, delivery or Commissioning if WENDT, in its sole discretion, determines that Buyer's financial condition does not merit WENDT's extension of credit. A finance charge of 1.5% per month will be assessed on all past due balances. If such finance charge exceeds the maximum rate allowed by Applicable Law, then such finance charge shall be deemed to be reduced to equal the maximum rate allowed by Applicable Law.

**20. Collection Costs.** Buyer shall be liable for all of WENDT's collection costs (including reasonable attorneys' fees and costs).

**21. Publicity.** Buyer hereby consents to WENDT's use of Buyer's name as a reference and customer in WENDT sales and marketing materials and efforts, including, without limitation, brochures, sales literature and website.

**22. Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of New York, U.S. without reference to principle of conflicts of law. WENDT and Buyer agree that the United Nations Convention on Contracts for the International Sale of Goods (the "Convention") shall not apply to their rights and obligations under this Agreement.

**23. Force Majeure.** WENDT's performance hereunder shall be excused if and for so long as a breach is caused by a Force Majeure and reasonable notice thereof has been given to Buyer. If WENDT fails to perform hereunder as a result of a Force Majeure, WENDT shall be required to fulfill its obligations hereunder within a reasonable time after the Force Majeure ceases to exist.

**24. Export Controls.** The Agreement and all Equipment furnished by WENDT to Buyer in connection herewith shall at all times be subject to any Applicable Law relating to the export, re-export, delivery or transfer from the U.S. of any products that may be imposed from time to time by any

Government Authority, including, without limitation, the U.S. Export Administration Regulations (15 CFR Ch. VII, Subchapter C).

**25. Amendment.** The Agreement may not be amended except by a written instrument executed by an authorized representative of both Parties; provided, however, the Warranty may only be amended in accordance with **Section 12**.

**26. Assignment.** Buyer may not assign any of its rights, duties or obligations under the Agreement without WENDT's prior written consent.

**27. Notices.** All notices required or permitted hereunder shall be in writing and: (a) personally delivered (deemed effective upon personal delivery); or (b) sent by an internationally recognized, commercial overnight delivery service with provisions for a receipt, postage or delivery charges prepaid (deemed effective upon receipt); and shall be addressed to the Parties at their respective addresses as set forth in the Quotation.

**28. Disputes.** Any dispute arising between the Parties pursuant to the Agreement shall be subject to the exclusive jurisdiction of and shall be finally settled in an action commenced and maintained in any state or federal court sitting in Buffalo, New York, U.S. and the Parties irrevocably consent and submit to the personal jurisdiction of said courts and agree not to challenge or assert any defense to the jurisdiction of said courts, including, without limitation, *forum non conveniens*. If Buyer commences any such action in a court other than any of said courts, Buyer shall pay all of WENDT's cost and expense, including attorneys' fees and court costs, to move such action to the appropriately-venued court.

**29. Waiver.** Failure by either Party to insist upon strict performance of any provision herein by the other Party shall not be deemed a waiver by such Party of its rights or remedies or a waiver by it of any subsequent default by the other Party, and no waiver by either Party shall be effective unless it is in writing and duly executed by such Party.

**30. Counterparts.** The Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**31. Survivability.** All representations, warranties and agreements herein shall survive and continue to bind the Parties after the execution and delivery of the Agreement and the expiration or earlier termination of the Agreement, to the extent and for as long as may be necessary to give effect to the rights, duties and obligations of the Parties pursuant to the Agreement, subject to any applicable statute of limitations.

**32. Limitation on Action.** No action at law or in equity shall be brought by Buyer against WENDT unless it is commenced within one (1) year from the date of delivery of the Equipment by WENDT to Buyer or from the date any alleged claim accrued, whichever is earlier.

**33. Inconsistencies.** If any provision of these Terms and Conditions are inconsistent with any provision of the Quotation, then the provision of the Quotation shall control.



7.0

# WENDT CORPORATION TERMS AND CONDITIONS OF SALE - NEW EQUIPMENT

**34. Definitions.** (a) "Applicable Law" means all applicable: (1) laws, rules, regulations, statutes, orders and ordinances of any Government Authority; (2) common law; and (3) international treaties and conventions; (b) "Buyer" means the party to whom the Quotation is addressed (as set forth on the first page thereof); (c) "Confidential Information" means all information, in whatever form, relating to any business of WENDT or any WENDT affiliate, that is: (1) treated as confidential and/or proprietary by WENDT or any WENDT affiliate; and (2) disclosed by WENDT or any WENDT affiliate to Buyer or is otherwise learned, observed or perceived by Buyer, at any time before, on or after the Effective Date in connection with the Agreement; (d) "Effective Date" means the effective date of the Agreement which shall be the date on which WENDT and Buyer have each agreed upon the terms of, and duly executed, the Agreement; (e) "Equipment" means the equipment, spare parts and/or other products set forth in the Quotation; (f) "Force Majeure" means any event or circumstance beyond WENDT's reasonable control that prevents or delays the performance of WENDT's obligations hereunder, including, without limitation, natural disasters, wars, riots, sabotage, terrorism government action, lockout, strikes, labor disputes, inability to obtain suitable equipment or components, delay or default by WENDT's suppliers, acts of God or fire; (g) "Government Authority" means any foreign, federal, state, local or other government, government agency or authority or quasi-governmental body, including, without limitation, any government department, board, commission, court or tribunal; (h) "Improvement" means any invention, innovation, idea, improvement, trade secret, know-how or other intellectual property right of any kind, whether or not patentable, that: (1) is made, conceived, developed or reduced to practice by Buyer or by or on behalf of WENDT, either independently or jointly with any other Person; and (2) incorporates, embodies, arises from or relates to, any WENDT Technology or any Equipment; (i) "Parties" means WENDT and Buyer; (j) "Person" means any individual, corporation, Government Authority, partnership, limited liability company or any other entity of any kind; (k) "Taxes" means all taxes, charges or other assessments of any kind of any Government Authority (including, without limitation, withholding taxes, sales taxes, use taxes, and any interest, fines, or penalties thereon) levied or based on, directly or indirectly, any purchase price paid hereunder, whether levied against WENDT, Buyer or any other Person. "Taxes" shall exclude any income, franchise or any other similar taxes of any Government Authority payable by WENDT as to its receipt of any purchase price; and (l) "Technology" of a Person means all (both domestic and foreign) patents, patent applications, copyrights, trademarks, service marks, trade names, licenses, mask works, know-how, trade secrets, methods, processes, technologies, inventions, ideas, improvements, concepts, Confidential Information and all other intellectual property rights of any kind, owned by, or licensed to, such Person.

