



**GENERAL TERMS AND CONDITIONS - BIRD CONTROL SYSTEMS CORP. v1.2 20181004**

**1. Definitions**

- 1.1. In these General Terms and Conditions, the terms listed below have the following meaning:
- a. General Conditions: the terms and conditions as set out below.
  - b. Vendor or BCSC: Bird Control Systems Corp., a Delaware corporation with offices at 27350 SW 95th Ave, Suite 3022, Wilsonville, OR 97070, USA.
  - c. Customer: any person or entity ordering, purchasing or using any Product(s).
  - d. Products: those portable and non-portable tangible products the Vendor supplies to the Customer.
  - e. Parties: the Vendor and the Customer.

**2. Applicability**

- 2.1. All Products are subject to these General Conditions. By ordering, purchasing or using any Products, Customer agrees to the General Conditions as contained herein.
- 2.2. These General Conditions apply to: (i) any price sheets, invoices, packing slips, quotes, order forms, agreements or other documentation issued by Vendor or Customer for Products; (ii) deliveries of Products that are delivered by Vendor or by a third party on behalf of the Vendor; (iii) any further or follow-up agreements between the Vendor and the Customer. The Customer is deemed to have understood and agreed to the above.
- 2.3. The applicability of any terms and conditions other than these General Conditions, including, but not limited to any terms or conditions of the Customer, is expressly rejected. These General Conditions shall constitute the entire and exclusive agreement between Vendor and Customer, and any additional or different terms in any purchase order, counteroffers, invoices, order forms or wherever else contains are objected to and rejected.
- 2.4. If one or more of the provisions of these General Conditions are deemed void in whole or in part, the other provisions of these General Conditions will continue to apply in full force, and the Parties will consult in order to agree on an alternative provision that is in keeping with the Parties' intention of the voided provision.

**3. Related Documents**

- 3.1. Any pricelists, brochures, catalogues, leaflets, etc., that are provided to Customer are as accurate as reasonably possible. They are made available to the Customer for information purposes only and cannot bind the Vendor in any manner whatsoever. The documents in question furthermore are and remain the Vendor's intellectual property.

**4. Prices**

- 4.1. Unless otherwise stated, all prices for Products are denominated in U.S. dollars, are exclusive of taxes, import duties, freight charges, shipping and administrative costs, and other government charges, and are exclusive of any other costs incurred in relation to the Customer's order, purchase and use of Products. Customer will pay all sales, use, excise, and other taxes on Products unless exempt under law or if the Customer furnishes the Vendor with a valid resale or exemption certificate. The reporting and payment of all taxes for Products is Customer's sole responsibility.
- 4.2. The prices of the Products are based on delivery FOB Vendor's warehouse and the Customer will be solely responsible for all costs related to any transport from the Vendor's warehouse to any address stated by the Customer.
- 4.3. The Vendor has the right to change the prices of any Products not yet delivered and/or paid for if one or more cost factors change prior to delivery in such a way as to directly influence the price of the Products to be delivered. The Vendor also has the right to immediately adjust prices if a statutory price-determining factor so requires. The Vendor will inform the Customer of any such changes to the prices of Products within a reasonable period.
- 4.4. If any special circumstances occur after an order is placed and as a result of which the Vendor incurs extra costs, the Vendor will inform the Customer accordingly and have the right to charge the extra costs to the Customer.
- 4.5. The relevant documents and data in the Vendor's accounting records or systems serve as full evidence of the performances provided by the Vendor and the amounts payable by the Customer for those performances, without prejudice to the Customer's right to provide evidence to the contrary.

**5. Delivery**

- 5.1. All delivery periods stated and/or agreed on are based on information and circumstances known to the Vendor at the



time the order is placed. All orders for Products are subject to availability. Any stated delivery periods are target dates and do not bind the Vendor, and are stated for information purposes only, unless the Parties otherwise expressly agree in writing. The Vendor will use its best efforts to observe the requested delivery period, but the mere exceeding of a delivery period does not constitute a breach of any of the provisions of these General Conditions. Late delivery in no event gives the Customer the right to reject the delivery or to claim damages.

- 5.2. All Products are delivered FOB Vendor's warehouse. All risks for Products to be delivered by the Vendor pass to the Customer the moment the Vendor delivers the Products to the Customer or any third party designated by the Customer. Transportation will then be at Customer's risk, and any loss or damage after Vendor's delivery to the carrier will not relieve Customer of its payment obligations. However, the Products remain the Vendor's property until the price has been paid in full.
- 5.3. The Vendor has the right to deliver the Products in parts (partial deliveries), which it may invoice separately. The Customer is required to pay those partial invoices in accordance with Article 13 of these General Conditions.
- 5.4. If the Customer refuses to take delivery of the Products ordered, the Vendor has the right:
  - a. to deliver the Products by means of written notice, in which case the Vendor will store the Products at the Vendor's property or at a third party for the Customer's account and risk, including the risk of loss or loss of quality; or
  - b. to sell and deliver the Products to a third party or third parties.
- 5.5. All deliveries will be made only to persons who have reached the legal age of majority in the state or province in which they are to be concluded.
- 5.6. The Vendor makes no representation as to the legal rights or ability of anyone to purchase, import, ship, accept delivery of or use laser products and, as such, the Customer is solely responsible for adherence to the laws, rules and regulations governing the purchase, shipment, ownership and use of the Products at all times after delivery of the Products.
- 5.7. If the Vendor incurs loss, in any form whatsoever, due to Customer's or Customer designee's refusal to take delivery or inability to accept delivery of the Products ordered, the Customer is liable for that loss and any damages suffered.
- 5.8. The Customer must do everything that may reasonably be expected of it to enable the Vendor to deliver the Products in time, failing which the Vendor has the right to suspend its obligation to deliver.

## **6. Additional work**

- 6.1. If the Vendor is required to perform work for the Customer, regardless of the reason therefore, and that has not been recorded in writing in an agreement between the Parties, or if costs are incurred due to actions of the Customer in connection with such work, that work and those costs are regarded as additional work and will be charged as such. The Customer must pay the costs of such additional work.

## **7. Retention of title**

- 7.1. All Products remain the property of the Vendor, until the Customer has paid in full all current or future amounts payable to the Vendor for such Products.
- 7.2. The title to the Products does not pass to the Customer if and/or because the Customer processes or treats the Products received from the Vendor as the Customer's. The Products will remain the property of the Vendor until the obligation set out in article 7.1 has been met by the Customer. The Customer merely holds the Products on behalf of the Vendor.
- 7.3. All Products are sold in the State of Oregon, USA, and title passes to Customer in the State of Oregon, USA
- 7.4. The Customer must: (i) maintain adequate insurance for the Products delivered but not yet paid for in full; (ii) at the Vendor's request immediately transfer to the Vendor by means of assignment all rights of action that the Customer may have against third parties with regard to the Products delivered by the Vendor; and (iii) inform third parties that the Products that the Vendor has delivered to the Customer have been delivered by the Vendor to the Customer subject to retention of title if the Customer has not yet paid for all or part of those Products.
- 7.5. If the Customer fails to perform its obligations under this article or the Vendor has valid reason to fear that the Customer will not perform its obligations under this article, the Vendor may remove or have removed – at the Customer's location or at a third party holding the Products for Customer – the Products delivered to the Customer that are subject to the retention of title referred to in this Article. The Customer is required to fully cooperate with the removal of the Products. If and when the Customer does not cooperate nor pays the amounts due, it will incur a fine payable immediately of 10% of the price for the Products per day that the amounts owed to the Vendor are not paid, without prejudice to the Vendor's right to demand performance of the obligations under these General Conditions and/or any other remedies or damages available to Vendor.



- 7.6. The market value of the Products on the day of repossession on the basis of this Article will be credited to the Customer.
- 7.7. After payment in full, title to the Products is transferred to the Customer subject to an undisclosed pledge for the benefit of the Vendor, if such is requested by the Vendor, those rights of pledge shall serve as additional security for the payment of any and all claims that the Vendor has or will have against the Customer under this Agreement. At the Vendor's request, the Customer will sign a deed of pledge and will register that deed with the appropriate authorities.

### **8. Right of retention**

- 8.1. The Vendor has a right of retention in all Products that are in the Vendor's possession of or on behalf of the Customer until the Customer performs all its obligations under these General Conditions.
- 8.2. If the Products referred to article 8.1 that are retained by the Vendor are destroyed or damaged in whole or in part, or if their value decreases without it being due to wilful misconduct or gross negligence on the part of the Vendor, the Customer cannot claim any damages possibly suffered in connection to those Products.

### **9. Duty to investigate/complaints**

- 9.1. The Customer must check within three (3) days after delivery of the Products whether their quantity and quality are correct and are in conformity with the order placed.
- 9.2. If the Customer discovers any defect in the quantity and/or quality of the Products delivered, the Customer must notify the Vendor of the defect in writing immediately after discovery, but in no event later than eight (8) days after delivery of the Products. If the Customer proves that it could not reasonably have discovered the defect within that period (i.e. a hidden defect), it must notify the Vendor in writing of the defect within eight (8) days after discovery, or in any event within eight (8) days after it could reasonably have been discovered.
- 9.3. The written notification referred to in Article 9.2 must contain: (i) a detailed description of the defect; and (ii) the invoice number, the packing slip related to the delivery, and the Product serial number, as to enable the Vendor to respond to the claim as adequately as possible.
- 9.4. If a complaint is not reported within the term stated in Article 9.2 and/or does not meet the requirements stated in Article 9.3, the Customer's rights regarding the possible defect will be waived.
- 9.5. The Vendor will use its best efforts to assess whether the complaint is valid within fourteen (14) days after receiving it.
- 9.6. If a complaint is declared valid by the Vendor, the Vendor may, at its discretion, either correct the relevant part of the delivery, redeliver the Products to the Customer, or provide the Customer a credit for the relevant part of the delivery, which is then considered cancelled. If a complaint is declared valid, the Customer is not entitled to any damages or compensation other than that referred to in the preceding sentence.
- 9.7. The Customer may return Products to the Vendor only with the Vendor's prior written consent. Return shipments that are not preceded by a complaint and the relevant details regarding the complaint are not permitted. If the Customer returns the Products contrary to these provisions or without a valid reason, the Vendor will keep those Products available to the Customer for the Customer's account and risk, insofar as the Vendor does not refuse those Products. The Vendor then holds those Products without in any way acknowledging the validity of a claim under warranty or alike on the part of the Customer. The costs of return shipments are payable by the Customer.
- 9.8. Complaints do not release the Customer from its payment obligations.
- 9.9. If for any reason whatsoever the Vendor is in default in the timely and/or correct delivery of confirmed orders, it is not liable for damages unless otherwise agreed in writing by the Vendor. The Customer is obligated to have and maintain adequate insurance with regard to the foregoing risk.

### **10. Performance by the Vendor; Warranty**

- 10.1. The Vendor will use its best efforts to deliver Products in the same quantity and of the same quality as ordered by the Customer and confirmed by the Vendor.
- 10.2. If the Customer has used, treated or processed the Products delivered by the Vendor in whole or in part, or has delivered them to third parties, the Vendor is deemed to have met its obligations under these General Conditions.
- 10.3. Minor differences in quality, color, size, weight, finishing, design, etc. that are considered reasonable by market standards or that cannot be avoided for technical reasons, as well as normal wear and tear of the Products delivered, in no event constitute a breach on the part of the Vendor.
- 10.4. If the Products delivered are in conformity with the order placed but prove to be unsuitable for the purpose for which



the Customer wishes to use them, that is at the Customer's risk and does not constitute a breach on the part of the Vendor.

10.5 Vendor warrants that Products ordered and subsequently delivered to the Customer will conform to the Vendor's then-current published specifications for the Product and limited to the warranty period specified by the Vendor for that Product on the date of the order. The Vendor reserves the right to make changes to the Products and has no obligation to alter previously purchased Products. Vendor's sole obligation to Customer and Customer's exclusive remedy under this warranty is as follows:

a) Vendor will repair or replace without charge Products found to be defective so long as the Customer returns the Products to the Vendor, freight prepaid, to Vendor's service center.

b) Vendor will not be required to ship a replacement Product until it has confirmed through its examination that the Product is in fact defective. Vendor will pay freight costs to ship any repaired or replacement Product to Customer if the Product is found to be defective, through no fault of Customer. If the Vendor is unable within a reasonable time to repair or replace the Product, then Customer will be entitled to the refund of the purchase price for the Product.

c) This warranty does not apply to any Product which Vendor determines has been subjected by Customer or another party to:

(1) operating or environmental conditions not in conformance with the Product's specifications, installation guides or recommendations;

(2) damage, misuse or neglect;

(3) improper installation, repair, modification or alteration; or

(4) use for which it was not intended or designed.

This warranty also excludes expendable items, such as lamps, fuses, or other parts which fail from normal use.

These warranties and remedies shall become null and void in the event the Products have been or are being used by anyone other than the original purchaser of the Product or if the Product has been or is currently being used at a location other than the original installation address.

THIS IS VENDOR'S ONLY WARRANTY FOR PRODUCTS. VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, GUARANTEES OR REMEDIES - WHETHER EXPRESS, IMPLIED, OR STATUTORY - INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR ALSO DISCLAIMS ANY IMPLIED WARRANTY ARISING OUT OF TRADE USAGE OR OUT OF A COURSE OF DEALING OR COURSE OF PERFORMANCE. IN NO EVENT SHALL VENDOR'S LIABILITY TO YOU EXCEED THE LIMITATIONS SPECIFIED IN THESE GENERAL CONDITIONS

## 11. Product recall

11.1. In urgent cases – whereby the Vendor will assess whether or not a case is urgent – in any event including the situation in which the Products delivered or to be delivered do not meet the statutory requirements, the Customer is required, at the Vendor's request, to return the Products already delivered to the Vendor and, if the Customer has already delivered the Products to third parties, to recall them from the third parties in question.

11.2. If the Vendor performs a product recall as stated in paragraph 11.1, the Customer must take all the measures that the Vendor considers necessary and must comply with all the instructions given by the Vendor regarding the Product(s) recall. The Customer must also take all necessary and reasonable measures to limit the loss suffered by it and the Vendor to the maximum extent possible.

11.3. If the Vendor decides to perform a product recall, it is only required to either replace the Products or to provide the Customer a credit for the Products recalled. In the event of a Product recall, the Vendor is not liable for any loss or damages incurred by the Customer.

## 12. Force majeure

12.1. Neither Vendor nor Customer will be liable to the other for any delay or failure to perform if that delay or failure is due to or results from a cause beyond its reasonable control. Notwithstanding the foregoing, in no event shall a force majeure event or delay excuse non-performance by reason of failure to make a payment otherwise due any payable. If a delay continues for more than sixty (60) days, the party so impacted by the delay may cancel the order.

## 13. Payment

13.1. Unless otherwise agreed, the Customer must pay any and all amounts owed to the Vendor within thirty (30) days of the invoice date.

13.2. Any discount for prompt payment that the Vendor offers the Customer automatically lapses if the Customer fails to pay the invoice by the due date.



- 13.3. If the Customer has any complaints regarding any invoice received, it must inform the Vendor of those complaints in writing within five (5) business days after the date of the invoice, failing which the invoice is deemed to be correct and all claims are waived.
  - 13.4. Complaints regarding the correctness of an invoice or the services provided therefore in no event give the Customer the right to suspend payment or any of its other obligations.
  - 13.5. The Customer is in no event entitled to settle or set off any amounts owed by it and/or claims held against it by the Vendor with amounts owed to it and/or claims held by the Customer against the Vendor, irrespective of whether such amounts and/or claims are payable.
  - 13.6. If the Customer fails to pay the invoice within the payment term, the Customer is automatically in default without any notice of default being required. The Customer owes contractual interest at a rate of one percent (1%) per month or part of a month on the amounts owed and payable to the Vendor, unless the statutory interest or commercial interest is higher, in which case that statutory interest or commercial interest applies. The interest on the amount due is charged from the time the Customer is in default until the time the Vendor receives payment of the entire amount due.
  - 13.7. All costs incurred by the Vendor in enforcing its rights under these General Conditions will be payable by the Customer.
  - 13.8. If the Vendor incurs any loss or damages as a result of the Customer's refusal to pay or other failure to meet its obligations, regardless of the reason therefore, the Customer is liable for such loss and/or damages.
  - 13.9. Payments by the Customer are first deducted from the costs and interest due (in that order) and then from the principal and interest accrued, whereby older claims have priority over new claims. Without being in default, the Vendor may refuse an offer of payment if the Customer states a different order of allocation of the payment. The Vendor may refuse full repayment of the principal if the default interest, accrued interest and collection costs are not also paid at the same time.
  - 13.10. If the Vendor considers it desirable and, in any event, if the Customer fails to perform any payment obligation irrespective of the grounds therefore, the Vendor has the right to demand payment in advance or security for the Customer's payment obligations, regardless of any other payment arrangements that the Vendor may have agreed to. The Customer must comply at the Vendor's first request.
  - 13.11. The Vendor may at any time request the Customer to make payment in advance or obligate the Customer to cooperate in a credit assessment if the Vendor wishes to insure the orders to be delivered by it at a credit insurer of its choice.
  - 13.12. If the Customer fails to comply with its payment obligations, the Vendor has the right:
    - a. to deliver the Products by means of written notice, in which case the Products will be stored at the Vendor's location or at a third party from the moment of the written notice, for the Customer's account and risk, including the risk of loss of quality, until the entire purchase price has been paid; or
    - b. without any notice of default being required, and without incurring any liability, to sell or deliver the Products to a third party or third parties. In that case, if the Vendor incurs costs in doing so or incurs any loss and/or damages as a result of the Customer's failure to pay, the Customer is liable for such loss and/or damages and those costs.
- 14. Termination**
- 14.1. The Vendor has the right without any judicial intervention to terminate all orders, quotes, agreements, etc. between the Vendor and the Customer with immediate effect, without being liable for damages and without prejudice to any of its other rights, if:
    - a. the Customer is declared bankrupt or is granted a suspension of payment;
    - b. a petition in bankruptcy or a petition for a suspension of payment is filed against the Customer;
    - c. the Customer offers its creditors a composition;
    - d. the Customer ceases or is about to cease its business;
    - e. any circumstances that have come to the Vendor's attention that provide valid reason to fear that the Customer will fail to perform its obligations correctly and/or in time, and/or if, in the Vendor's opinion, collection of current or future claims cannot be guaranteed;
    - f. the Customer fails to perform any of its obligations, or to do so in full or on time, after the expiration of any required cure period;
    - g. due to a delay on the part of the Customer, the Vendor cannot meet its obligations; or



- h. circumstances occur of such a nature that performance of the Vendor's obligations are impossible, or the Vendor cannot reasonably be required to meet its obligations on the conditions originally agreed upon.
- 14.2. Upon any such termination, all claims that the Vendor has against the Customer will be immediately due and payable and the Vendor is entitled to payment for the work already performed and the costs incurred by it up to the time of termination.

### 15. Liability

- 15.1. CUSTOMER'S EXCLUSIVE REMEDIES CONCERNING VENDOR'S PERFORMANCE OR NONPERFORMANCE ARE THOSE EXPRESSLY STATED IN THESE GENERAL CONDITIONS. UNDER NO CIRCUMSTANCES WILL VENDOR BE LIABLE FOR REPROCUREMENT COSTS, LOST REVENUE OR PROFITS, LOSS OF DATA, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THEY WERE FORESEEABLE AND VENDOR WAS INFORMED OF THEIR POTENTIAL. VENDOR WILL NOT BE LIABLE FOR ANY DAMAGES CLAIMED BY CUSTOMER BASED UPON ANY THIRD PARTY CLAIM. VENDOR WILL NOT BE LIABLE FOR ANY LOSS INCURRED BECAUSE VENDOR BASED ITS ACTIONS ON INCORRECT INFORMATION OR FILES PROVIDED BY THE CUSTOMER. If it is established in court of competent jurisdiction that the Vendor is liable to the Customer for loss incurred in connection to its obligations, that total liability is in any event limited by the following provisions:
  - a. the Vendor's liability is in any event limited to the amount paid in the case in question by the Vendor's liability insurance; or
  - b. if for any reason whatsoever the Vendor's liability insurance does not cover the case at hand, the Vendor's liability, is limited to the lesser of:
    - the net amount of the invoice for the Products to which the event relates or, if several invoices relate to the event, the net amount of the last of that series of invoices that the Vendor sent to the Customer before the date of the event; or
    - if the event is not related to the delivery of Products or if no invoice has been sent in that regard, the net amount of the most recent invoice that the Vendor sent to the Customer before the date of the harmful event; or
    - Twenty thousand US Dollars (\$20,000.00).

The foregoing limit shall apply regardless of the form of action (i.e. whether the lawsuit is in contract or in tort, including negligence). Because some states do not allow exclusion or limitation of liability for consequential or indirect damages, in such states Vendor's entire liability is limited to the fullest extent permitted by law.

- 15.2. Any loss for which the Vendor may be held liable must be reported to the Vendor as soon as possible but no later than fifteen (15) days after the loss occurs, otherwise the claim is waived. This term does not apply if the Customer can prove that the loss could not be reported within the stipulated period for a valid reason.
- 15.3. Any liability claims against the Vendor are waived twelve (12) months after the Customer became or could reasonably have become aware of the event giving rise to the claim.

### 16. Indemnification

- 16.1. The Customer is liable for any and all damages, loss, costs and expenses incurred by the Vendor, the companies affiliated with it or third parties that result from or have arisen in connection with any breach in the performance of the Customer's obligations under these General Conditions, or from the possession, handling, sale or use of the Products, irrespective of whether the loss, damage, costs or other expenses were caused by the Customer, its employees, or any other natural person or legal entity for which the Customer is responsible.
- 16.2. The Customer fully indemnifies the Vendor and its affiliated companies and will hold them harmless from and against all third-party claims regarding damages, loss, costs and expenses of third parties arising from or related to any breach in the performance of its obligations or any possession, handling, sale or use of the Products by customer or other third parties for which the Customer is responsible, as a result of any and all claims filed, proceedings instituted or imminent proceedings by those third parties, including but not limited to claims filed, as well as claims based on infringement of any intellectual property rights related to Products delivered.
- 16.3. If the Vendor is held liable by third parties, the Customer must assist to the best of its abilities, the Vendor both in proceedings in and out of court and must immediately do any and all things that may be reasonably expected of it in that case and/or requested by the Vendor.



16.4. The Customer will always make every effort to limit the loss or damages incurred by the Vendor or any third party.

**17. Intellectual property rights**

17.1. Customer acknowledges that all right, title and interest in all patents, copyrights, trademarks, trade dress, trade secrets and other intellectual property embodied within, covering or in any way regarding the Products, including but not limited to production processes, applications, drafts, designs, drawings, inventions, models, techniques, works, procedures, results, creations, presentations, computer programs, know-how, data collections and other knowledge, is owned exclusively by Vendor, or its licensor(s), and all rights with regard to such intellectual property are reserved. Customer represents, warrants and covenants that it will not claim any right, title or interest in, or use, any such intellectual property, all of which remains exclusively the property of the Vendor or its licensor(s), and that Customer will not bring any suit or proceeding in an attempt to invalidate or claim any such intellectual property rights. Further, without the Vendor's prior written consent, the Customer may not use the Vendor's name or trademarks, or any words, pictures or symbols that in the Vendor's opinion may imply the Vendor's involvement in or approval of any written or oral advertisement or performance, logbook, plan, advice, brochure, newsletter, book or other published material.

17.2. The delivery of the Products by the Vendor to the Customer does not constitute a transfer of any intellectual property right by the Vendor to Customer. All works that the Vendor makes available to the Customer remain the Vendor's property. The Customer may use those works only for and with regard to the use of the Products and may not in any manner reproduce or publish those works, make them available to third parties in whole or in part, or use them in any other manner without the Vendor's express prior written consent.

17.3. The Customer hereby transfers to the Vendor, or will do so at Vendor's request, the copyright as well as all other intellectual property rights, including trademark and copyright and Vendor's rights in relation to copies, translations, adaptations, adjustments or works that the Customer has developed for the Vendor, as well as rights to all the rest that the Customer has made, such as any software programs, patent applications, research, website content and design, software applications and the related documentation and files. This transfer will be respectively accepted by the Vendor.

17.4. The Customer is not permitted to remove or change any reference to copyrights, trademarks, trade names or other intellectual property rights regarding the Products delivered by the Vendor or the related materials.

**18. Confidentiality/non-disclosure**

18.1. The Customer must observe confidentiality with regard to information provided by the Vendor, regardless of the medium used, that the Customer knows or could reasonably assume to be confidential.

18.2. Customer must treat all information received from the Vendor as confidential and may not disclose that information to any third party, and may not use such information for any purposes other than the use of the Products. The Customer will also impose this obligation on its employees and on any third parties who use the Products.

18.3. If the Customer violates the prohibitions of this Article, it forfeits to the Vendor, without any notice of default being required, for each violation a penalty payable immediately, not subject to litigation, of ten thousand dollars (\$10,000) and an amount of one thousand dollars (\$1,000.00) for each day or part of a day the Customer's violation continues, without prejudice to any other rights or remedies the Vendor may have, at law or in equity.

**19. Governing law and disputes; Entire Agreement**

19.1. These General Conditions and any disputes or claims arising out of, or in connection with, these General Conditions are governed by and construed in accordance with the laws of the State of Oregon without resort to conflict of laws rules. Each party irrevocably agrees that any action, suit or other legal proceeding relating to any disputes arising in relation to these General Conditions or any Product(s) will be brought in and settled by a court of competent jurisdiction in the State of Oregon, USA. Each party waives any objection (including any objection to venue, enforcement or grounds of forum non conveniens) which might be asserted against the bringing of any such action, suit or other legal proceedings in such courts. In the event any proceedings are commenced to enforce or construe these General Conditions or related to the Products, then the prevailing party in such proceedings shall be entitled to its reasonable attorney fees thereby incurred. In the event a judgment is entered in such proceedings, it is agreed that said judgment shall provide that the prevailing party shall be entitled to recover all attorney fees reasonably incurred in enforcing said judgment.

19.2. These General Conditions represent the entire agreement between the Vendor and the Customer regarding the Products. The Parties specifically disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. These General Conditions also supersede all previous verbal or written communications between the Parties regarding its subject matter. If any provision is held invalid, all other provisions shall remain valid, unless such invalidity would frustrate the purpose of these General Conditions.