Backer EHP is herein referred to as the “Seller” and the customer or person or entity purchasing goods (“Goods”) from Seller is referred to as the “Buyer.” These Terms and Conditions, any price list or schedule, quotation, acknowledgment of order, sales contract or other documents or terms at variance with or in addition to those set forth herein. In the event of the latter, Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance due to acts of God; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability or delays in transportation; default of suppliers; or other causes beyond Seller’s control, including force majeure. In the event of such change in any Goods manufactured prior to delivery, Seller reserves the right to change specifications and designs for the Goods without prior notice to Buyer, except with respect to Goods being manufactured for Buyer. Seller shall have no obligation to install or make any change in such Goods manufactured prior to the date of such change.

11. NUCLEAR/MEDICAL. GOODS SOLD HEREBY ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods with the foregoing understanding, agrees to communicate in the same writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of such use is based in tort, contract or otherwise, including allegations that the Seller’s liability is based on negligence or strict liability.

12. ASSIGNMENT. Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

13. QUANTITY. Buyer agrees to accept overruns of up to ten percent (10%) of the order on “made-to-order” goods, including parts. In such additional items shall be priced at the price per item charged for the specific quantity ordered.

14. REPLACEMENT / SERVICE GOODS. Upon the cancellation or fulfillment of this order, Seller will have no obligation to sell Buyer the Goods sold hereunder, including, but not limited to, the supply of replacement parts for Goods or Goods for Buyer’s consumer service division. Seller is not obligated to sell Buyer or its consumer service divisions Goods: (i) for any fixed period of time after production of the Goods supplied hereunder ceased; (ii) after the last date of shipment made under this order: or (iii) at any pre-established price to fulfill Buyer’s or its consumer service divisions requirements during or after production of the Goods ceased or after the last date of shipment under this order. Seller shall have the absolute right to revise the price of Goods and the terms of sale and to modify or discontinue the sale of the Goods, and such action shall not form the basis of any claim by Buyer against Seller.

15. TOOLING. Tool, die, and pattern changes, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns are to be paid by Buyer in advance by remittance to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. INSPECTION/TESTING. Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods for compliance with Seller’s standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller’s expense, at Seller’s plant, at Buyer’s plant, or at other locations and shall be in accordance with Buyer’s test procedures. All test results and inspection reports shall be furnished in writing to Buyer, with all costs associated with dismantling, reinstallation and transportation to and from Seller’s designated repair center or manufacturing facility and the time and expense of Seller’s personnel and representatives for site travel and diagnosis under warranty, assigned to Buyer’s claim against Seller or the Goods. The warranty is non assignable to Buyer or any transferee and all Goods, rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.

17. DRAWINGS. Seller’s prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor.

18. EXPORT/IMPORT. Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.

19. GENERAL PROVISIONS. These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding on the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No usage of course, custom, practice, or usage, or any agreement, understanding, or understanding, or any usage, or any agreement, understanding, or practice, or any course of dealing between Buyer and Seller, or any custom or usage of trade, or any course of dealing shall be binding unless hereafter made in writing and signed by the party to be bound; and no modification or additional terms shall be applicable to this agreement by Seller’s recital, acknowledgment, or acceptance of purchase orders, shipping instructions, or other documentation containing terms with variance or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed a warranty, Buyer’s satisfaction expressed in writing, or acceptance of Buyer’s performance, or selling of Goods, whether on credit or otherwise, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy hereunder. No course of dealing, conduct, custom, or usage of trade among the parties shall affect or modify the rights hereunder. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the State of Delaware and the parties agree that the proper venue for all actions arising in connection herewith shall be only in Delaware and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party without the consent of the other party, except that either party may act to enjoin the other party in the event the action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.