

1.3 Conditions of Sale

The following terms and conditions shall be deemed a part of this Sales Contract and/or every purchase order agreed to by Kress Corporation (“Kress”) and each sales contract entered into by Kress on the basis of the acceptance of any offer made by or to Kress:

1.3.1 Definitions:

As used herein, the term “Buyer” shall mean the customer and purchaser of the goods identified on Kress’ “Quotation/Sales Contract” or Kress’ written “Sales Order Acknowledgment”; the term “Order” shall mean the terms of any purchase such as price, quantities and specifications as set forth on the face of any purchase order which have been expressly accepted by Kress, the terms and conditions described in Kress’ Quotation, in Kress’ Sales Contract and Kress’ Sales Order Acknowledgment (if any), and all attachments, exhibits, and amendments to them, and these Conditions of Sale; the term “Goods” shall mean the specific equipment, including options and accessories and any related services described in the Order; and “Sales Order Acknowledgment” shall mean a writing issued by Kress bearing that title or any other express written acknowledgment by Kress of a purchase order issued by the Buyer.

1.3.2 Quotation:

Unless expressly provided to the contrary in Kress’ Quotation, the terms of Kress’ Quotation on page 1 constitute an offer which shall expire at Kress’ option without notice or further action on the part of Kress on the 60th day following the date set forth on the Quotation or, if no date is set forth on the Quotation, the 60th day following the date on which the Quotation is issued by Kress. This Quotation becomes the Sales Contract pursuant to terms set forth herein once Buyer accepts the Quotation by placement of any Order accepted by Kress. It is expressly understood that placement of any Order is subject to the conditions of sale set forth herein.

1.3.3 Acceptance:

Kress’ acceptance of Buyer’s purchase order is expressly made conditional on Buyer’s acceptance of the terms and conditions set forth herein in Kress’ Quotation / Sales Contract, in Kress’ Sales Contract and in Kress’ Sales Order Acknowledgment (if any), which are in lieu of any additional or different terms contained in Buyer’s purchase order or other document or communication pertaining to Buyer’s order or the Goods, which additional or different terms shall be deemed ineffective except to the extent that such terms constitute a part of the Order (as such term is defined in Section 1.3.1, above). Buyer’s assent to the terms and conditions contained in Kress’ Quotation, in Kress’ Sales Contract and in Kress’ Sales Order Acknowledgment (if any) shall be conclusively presumed by Buyer’s receipt of this Sales Contract, with the Quotation, from receipt of Kress’ Sales Order Acknowledgment (if any) without prompt objection thereto, from the Order of Goods per this Quotation/Sales Contract and/or from acceptance by Buyer for all or any part of the Goods. The Order shall not be binding upon Kress unless confirmed in writing by an authorized officer of Kress.

1.3.4 Change Of Price:

Unless the Order contains a fixed price provision, the price of the Goods is based upon the present cost to Kress of the materials and labor to be incorporated into the Goods and shall be subject to adjustment in accordance with this section 1.3.4. The price of the Goods shall be the greater of the amount set forth in the provision of the Order which expressly recites the amount of the price (the “Base Price”) or the amount calculated by the following formula as of the date of shipment of the Goods by Kress: $P1 = Po \times E1 / E0$

For the purposes of this Section 1.3.4, the components of the formula set forth above shall have the following meanings:

(a) P1 means the final price at the date of shipment;

(b) Po means the Base Price;

(c) E1 means the Mean Price Index #1192 for “Mining Machinery & Equipment” published by the U.S. Department of Labor, Bureau of Statistics or any successor index thereto (the “Index”) over the period commencing 60 days after the date on which Kress becomes contractually obligated under the Order and ending 60 days prior to the shipment date of the Goods; provided, that if the period commencing on the date on which Kress becomes contractually obligated under the Order and ending on the date of shipment is less than 120 days, E1 shall mean the most current available Price Index #1192 from the Index on the date of shipment.

(d) E0 means the most current available Price Index #1192 from the Index on the date on which Kress becomes contractually obligated under the Order.

LATE PAYMENT

Any late payment by Buyer for the Goods and/or parts shall result in a service and/or finance charge of 1 1/2% per month commencing 30 days after such payment is due. Unless otherwise stated in the Payment and Terms on page 1, final payment shall be due 30 days after the final delivery.

1.3.5 Delay Or Cancellation:

The performance of the Order is not subject to delay or cancellation by Buyer unless Buyer gives written notice to Kress and such notice is acknowledged, accepted and agreed to in writing by an authorized officer of Kress. Upon such cancellation or delay, Kress shall be entitled to immediate payment on demand of a prorated portion of the purchase price based on the percentage of completion as determined by Kress and payment covering Kress' increased costs, including without limitation storage and insurance, as a result of the cancellation or delay.

1.3.6 Letter Of Credit:

Unless otherwise expressly provided to the contrary in another provision of the Order, Buyer shall, not later than fifteen (15) days following the acceptance of the Order by Kress or the date on which Kress otherwise becomes contractually bound to the Order, post with Kress an irrevocable letter of credit issued by a U.S. bank deemed satisfactory to Kress in the full amount of the purchase price of the Goods under the Order. Notwithstanding anything provided to the contrary in any other provision of the Order, if Kress determines in its sole discretion that Buyer's financial condition does not warrant proceeding with the transaction described in the Order without the security provided by a letter of credit, Buyer shall, not later than fifteen (15) days following its receipt of a written notice from Kress reciting that a letter of credit is required, post with Kress an irrevocable letter of credit issued by a U.S. bank deemed satisfactory to Kress in the full amount of any then unpaid balance of the purchase price of the Goods under the Order. The letter of credit described in this Section 1.3.6 shall contain such terms and conditions as shall be specified by Kress to assure Kress of payment, including direct payment provisions. Kress shall not be obligated to commence performance or continue performance, as the case may be, prior to the posting of such letter of credit as is required hereunder.

1.3.7 Taxes:

Unless otherwise expressly provided in the Order, the prices set forth in the Order do not include taxes, license fees, or other assessments with respect to the Goods, including without limitation tariffs and other duties in connection with the exporting or importing of the Goods, and Buyer shall pay any and all use, sales, privilege, or other taxes or license fees or assessments imposed by foreign, federal, state or local governments.

1.3.8 Shipment:

Except as otherwise expressly provided in the Order: all shipments are F.O.B. Kress' plant, Brimfield, Illinois, and at the risk of Buyer after delivery to the carrier; selection of the means of transportation for shipment of the Goods shall be by Buyer, provided that if Buyer has not furnished instructions to Kress not later than 60 days prior to the date of shipment, such selection shall be at Kress' sole discretion; and all storage, shipping, insurance, special packing or crating, and other incidental costs with respect to the Goods shall be for the account of or paid directly by Buyer. Except as otherwise expressly provided to the contrary in another provision of the Order, if the Order provides that Kress shall pay for insurance and transportation costs of shipping the Goods, selection of the insurer and transportation for shipment shall be made by Kress and the costs of such insurance and transportation shall be based upon the applicable rates in effect at the time of the acceptance of the Order by Kress. Any increased costs in connection with delivery of the Goods, including but not limited to any increase in the cost of domestic inland transportation, shall be for the account of or paid directly by Buyer. Notwithstanding anything provided herein to the contrary, in the event that the Order provides that Kress shall pay for insurance and transportation costs and if for any reason the cost of ocean insurance or ocean transportation increases prior to the date of shipment, Kress shall have the right to renegotiate the purchase price for the Goods with the Buyer. In the event that Kress and Buyer have not reached agreement with respect to a new price within ten (10) days after Kress gives notice to Buyer that Kress intends to renegotiate such price, Kress shall have the right to cancel the Order and upon such cancellation, if any, neither party shall have any liability thereunder.

1.3.9 Shipment Date:

Unless otherwise expressly provided in the Order, any shipment date for the Goods is a desired and not a promised date. Kress will make all reasonable efforts to meet the shipment schedule set forth in the Order but shall not be liable for failure to do so. Notwithstanding anything provided in the Order to the contrary, Kress shall not be liable for any damage to or loss of the Goods or any delay in or failure to ship, deliver, erect, install, service, repair or replace the Goods arising from shortage of raw materials, failure of suppliers to make timely delivery, labor disputes of any kind, fire, windstorm, flood, theft, war, embargoes, governmental acts or rulings, loss or damage or delays in carriage, acts of God, or any other circumstances beyond Kress' control. Kress shall have the right to make partial shipments. Each partial shipment shall be deemed a separate sale and payment for the goods in the partial shipment shall become due in accordance with the terms of payments set forth in the Order on a prorated basis.

1.3.10 Assembly, Maintenance And Use:

Kress shall, at its expense and upon request by the Buyer, supply one or more supervisors (the number of which to be determined by Kress) to supervise any necessary assembly or erection of the Goods at the Buyer's facility; provided, that unless expressly provided to the contrary in another provision of the Order, Kress shall not be obligated to supply such supervisory personnel for a period in excess of five (5) consecutive days or which involves more than one trip from Kress' facility to the Buyer's facility, and such personnel shall not be obligated to attend to such supervisory duties in excess of 10 hours per day. Buyer shall supply all equipment needed to accomplish such assembly or erection and any other necessary personnel for the assembly or erection of the Goods. Without limiting the generality of the foregoing, Kress shall not be responsible for supply of any fuel or lubricants for the Goods. Kress shall supply Buyer with any operations manuals or other materials that it has prepared for dissemination to customers regarding operation or maintenance of the Goods and shall use reasonable efforts to furnish Buyer with any subsequent supplements or updates to such written materials during the period Buyer retains ownership of the Goods. Buyer shall make all such materials available to its employees engaged in operating and servicing the Goods and shall cause its employees to review such materials. Buyer shall only permit individuals who are experienced and trained in the use of the Goods to participate in the assembly and erection of the Goods and in the servicing, maintenance and operation of the Goods. Failure by the Buyer or any agents or employees of Buyer or any independent contractor retained by Buyer to fully comply with Kress' instructions regarding the assembly, erection or operation of the Goods shall be deemed to constitute an unapproved alteration of the Goods for purposes of Section 1.3.11 and Section 1.3.13 hereof, with the result that the warranty provided in Section 1.3.11 shall not apply to the Goods and Buyer shall indemnify Kress in accordance with Section 1.3.13 with respect to any damage (including without limitation damage to the Goods, any environmental liability of other property damage), personal injury (including without limitation death) or other loss of any nature whatsoever arising from or relating to, in whole or in part, failure to comply with the instructions of Kress. Without limiting the generality of the foregoing, Kress shall not be liable for any damage (including without limitation damage to the Goods, any environmental liability, any warranty claim or other property damage), personal injury (including without limitation death) or other loss of any nature whatsoever arising from or relating to, in whole or in part, any act or omission of any employee or agent of Buyer in the course of the assembly of the Goods which was not expressly approved in advance by Kress.

1.3.11 Warranty:

WARRANTY PERIOD

The period during which this warranty is applicable (the "Warranty Period") commences on the date on which the Buyer commences to operate the Goods or ninety (90) days following the date of shipment, whichever is earlier, and expires upon the earlier of:

- (a) Buyer's transfer, sale or other disposition of the Goods or any part thereof;
- (b) 365 days, except that with respect to any parts rebuilt, replaced, repaired, reinforced or otherwise modified by Kress or with the prior written approval of Kress after delivery, such period shall be 90 days instead of 365.

OPTIONAL EXTENDED WARRANTY

An optional extended warranty may be purchased separately to extend the warranty period for certain covered items subject to the terms, conditions, limitations and disclaimers set forth herein.

WARRANTY TERMS AND CONDITIONS

During the Warranty Period and subject to the terms and exclusions of this warranty, Kress will bear the expense of, at its option, the repair, reinforcement or replacement for any part of the Goods, which part has been manufactured by Kress and which Kress determines to have failed because of defective material or workmanship under normal and proper use and service. This warranty (and any optional extended warranty) covers only failure resulting from defect(s) in parts, materials and/or workmanship provided by Kress. It does not cover failure and/or repairs resulting from other causes, including but not limited to buyer or dealer disassembly, misassembly, alteration, improper service/maintenance, abuse and/or misuse.

The labor for any such repairs, reinforcement or replacement shall be performed, at Kress' option, by the Buyer of Kress or a subcontractor of Kress.

In the event that Kress elects to have Buyer furnish the labor, Buyer shall not engage a subcontractor to perform the work without first obtaining Kress' written consent, which consent may be granted or withheld in Kress' sole discretion.

In the event that Kress elects to have Buyer furnish the labor, Kress' liability for the expense of labor shall be limited to the Buyer's direct labor rate per hour for a reasonable amount of labor hours performed on the basis of an ordinary work schedule.

“Buyer’s direct labor rate per hour” means only the amount of wages paid for each hour reflected on copies of time cards to be submitted to Kress as a part of the Warranty Claim Form (as defined herein) and does not include any amounts paid as fringe benefits or overhead.

The Buyer shall bear the cost of any premium charges for overtime labor and any special charges for service calls assessed in connection with the labor furnished for such repairs, reinforcement or replacement.

NOTICE

For this warranty to apply, Buyer must (i) give Kress written notice of any warranted defect within thirty (30) days after discovery, and in any event, not later than the date on which this warranty expires, and (ii) Submit to Kress a fully completed warranty claim on a form prepared by Kress (the “Warranty Claim Form”) within sixty (60) days after discovery and, in any event, not later than thirty (30) days after the date on which this warranty expires.

Kress shall furnish a Warranty Claim Form to Buyer upon request by Buyer.

In the event that Buyer fails to comply with the requirements of this Section 1.3.11, Buyer will be barred from any remedy.

Upon Kress’ written authorization, the damaged Goods or parts thereof must be shipped within a reasonable time following submission of the Warranty Claim Form prepaid to Kress or to such other location as shall be specified by Kress.

WARRANTY NOT ASSIGNABLE

The warranty set forth herein is not assignable.

RETROFIT ITEMS

To the extent that the warranty provided in this Section 1.3.11 is otherwise applicable to an item of optional equipment which is installed upon the Goods following delivery and during the Warranty Period applicable to such Good (which item of optional equipment shall be referred to as the “Retrofit Item”), the Warranty Period applicable to the Retrofit Item only shall commence on the date of shipment of the Retrofit Item by Kress and shall end on the later of (i) the 90th day following installation or the 150th day following shipment of the Retrofit Item by Kress, whichever is earlier, or (ii) the expiration of the Warranty Period applicable to the Goods upon or into which the Retrofit Item has been installed.

REPAIR/REPLACEMENT PARTS

(a) Warranty for replacement parts when vehicle is within warranty: the liability of Kress with respect to parts used in the course of any warranty repair, reinforcement or replacement is limited to the repair or replacement of such parts, at the option of Kress, if a defect in material or workmanship appears within the remaining vehicle warranty period or within 90 days of the date of installation, whichever is later, provided that Buyer must give Kress written notice of any such appearance of defect within fifteen days after discovery and in any event, not later than 90 days from the date of installation or the expiration of the Warranty Period, whichever is later, or Buyer will be barred from any remedy with respect to such part.

(b) Warranty for service parts when vehicle is outside warranty: the liability of Kress with respect to service parts used in the course of repair, reinforcement or replacement when the vehicle is outside warranty is limited to repair or replacement of such parts if a defect in material or workmanship appears within 180 days of the date of installation provided that Buyer must give Kress written notice of the appearance of defect within 15 days after discovery.

SHIPMENT FOB

All shipments of replacement parts hereunder are F.O.B. Kress’ plant, Brimfield, Illinois, or any, alternate origin or shipment appointed by Kress, if any, and at the risk of Buyer after delivery to the carrier; selection of the means of transportation for shipment of such replacement parts shall be by Buyer, provided that if Buyer has not furnished instructions to Kress when submitting the applicable Warranty Claim Form, such selection shall be at Kress’ sole discretion, and all costs of such shipment shall be for the account of or paid directly by Buyer.

OPTION TO ISSUE CREDITS

Notwithstanding anything provided herein to the contrary, the liability of Kress under this warranty may, at Kress’ option, be satisfied in the form of an issuance by Kress to Buyer of a credit in the amount of such liability that will be applied against the purchase price of parts subsequently ordered by Buyer from Kress until such credit has been exhausted or replacement of Goods/parts or furnishing its own labor.

LIMITATIONS AND DISCLAIMERS

Notwithstanding anything provided herein to the contrary, Kress’ liability under the warranty described in this Section 1.3.11 shall be limited to the direct costs of repairing, reinforcing or replacing Goods or, if such Goods cannot be repaired,

reinforced or replaced, to a credit of purchase price paid for the defective or nonconforming warranted Goods; provided, that Buyer shall first return to Kress those Goods for which a credit of the purchase price is to be made.

For purposes of this warranty, such “direct costs” of repairing, reinforcing or replacing Goods does not include any taxes imposed upon or payable in connection with any work performed in connection with this warranty. Buyer shall be responsible to pay and be liable for any such taxes.

Except as otherwise provided in the Kress Quotation/Sales Contract, Kress shall have no warranty or other liability for any part not manufactured by it, but agrees to cooperate with Buyer in endeavoring to obtain an assignment of Kress’ warranty rights, if any, against the manufacturer of any part not manufactured by Kress.

Prior to repair, reinforcement or replacement, Kress shall have the right to examine the part, at its option, either at the Buyer’s property or at Kress’ plant in Brimfield, Illinois.

The warranty provided herein shall not apply to any part which has been rebuilt by any entity other than Kress without the prior written approval of Kress.

Without limiting the generality of the provisions of this Section 1.3.11, the warranty provided hereunder shall not apply to parts or components subject to normal wear and tear resulting in repairs, maintenance and/or replacement during the warranty, including but not limited to the following: tires, spotlamps (including headlamps), tong bits, lights, cameras (including lenses), brakes and belts.

This warranty shall not apply to any of the Goods or parts thereof repaired, rebuilt, modified or altered by anyone other than Kress or any other person or entity approved by Kress in writing. Further, this warranty shall not apply to any of the Goods or parts thereof which utilize used, reworked or rebuilt components or new parts not obtained from Kress, without the prior written consent of Kress.

Without limiting the generality of the foregoing, deterioration of the Goods or any part thereof and/or damage or consequences resulting therefrom due to corrosion, abuse, accident, neglect, misassemble, misapplication, improper maintenance, improper storage, improper protection in storage or other normal wear is not covered under this warranty.

In addition, failure by the Buyer or any agents or employees of Buyer or any independent contractor retained by Buyer to fully comply with Kress’ instructions regarding the assembly, erection or operation of the Goods shall be deemed to constitute an alteration of the Goods and such alteration as well as the consequences thereof shall not be covered by this warranty. Any liability of Kress arising out of or pertaining in any manner to the supervisory services provided by Kress shall be subject to and governed by this limitation.

The liability of Kress under this warranty shall not include liability for any “down time”, loss of production, loss of sales, overhead expenses, losses, lost profits or other pecuniary or economic losses or damages, including without limitation any incidental or consequential damages.

Notwithstanding anything provided in this warranty to the contrary, defects and / or nonconformities discoverable upon inspection and/or testing after delivery must be brought to the attention of Kress prior to or within 30 days after acceptance of the Goods or any claim based upon such discoverable defects and/or nonconformities will be barred.

Except as otherwise expressly provided in the Kress Quotation/Sales Contract, the warranty provided herein is the only warranty made by Kress.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

The provisions of this Section 1.3.11 shall survive termination of the Order.

1.3.12 Limitation Of Liability:

NEITHER KRESS NOR ITS DEALER OR REPRESENTATIVE, IF ANY, SHALL BE LIABLE, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE, OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PURELY PECUNIARY DAMAGES OR FOR COSTS OF REMOVAL OR SHIPMENT. UNDER NO CIRCUMSTANCES SHALL KRESS’ LIABILITY OR BUYER’S REMEDY FOR DAMAGES AGAINST KRESS EXCEED THE AMOUNT OF THE PURCHASE PRICE OF GOODS SOLD FOR WHICH OR RELATING TO WHICH CLAIM IS MADE. IN THE EVENT THAT KRESS’ WARRANTY, IF ANY, OR ANY OTHER

OBLIGATION OF KRESS APPLICABLE TO THE GOODS FAILS OF ITS ESSENTIAL PURPOSE, BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO RETURN OF OR CREDIT FOR SO MUCH OF THE PURCHASE PRICE AS IS APPLICABLE TO THE GOODS WHICH ARE NONCONFORMING OR DEFECTIVE, PROVIDED SUCH GOODS ARE RETURNED TO KRESS F.O.B. KRESS' PLANT IN BRIMFIELD, ILLINOIS, U.S.A. THE PRICE STATED FOR THE GOODS IS BASED UPON AND IN CONSIDERATION FOR LIMITING KRESS' LIABILITY. NO ACTION ARISING OUT OF THE ORDER OR PERTAINING TO THE GOODS MAY BE BROUGHT BY BUYER MORE THAN 545 DAYS AFTER THE DATE OF SHIPMENT OF THE GOODS BY KRESS TO BUYER. BUYER'S REMEDIES AS PROVIDED HEREIN ARE ITS SOLE AND EXCLUSIVE REMEDIES. IN THE EVENT THAT CONSEQUENTIAL AND INCIDENTAL DAMAGES CONSIST OF PERSONAL INJURY AND/OR PHYSICAL PROPERTY DAMAGES OF A PECUNIARY NATURE, THIS DISCLAIMER SHALL APPLY TO ALL THREE TYPES OF DAMAGES TO THE FULLEST EXTENT PERMITTED BY LAW. IF, HOWEVER, THE PERSONAL INJURY AND/OR PHYSICAL DAMAGES CANNOT BE DISCLAIMED OR LIMITED AS PROVIDED HEREIN, THEN IN ANY SUCH EVENT THE DISCLAIMER OF PECUNIARY OR ECONOMIC CONSEQUENTIAL AND INCIDENTAL DAMAGES SHALL NEVERTHELESS BE FULLY ENFORCEABLE. IN THE EVENT OF ANY WARRANTY CLAIM OR ACCIDENT OR OCCURRENCE CONCERNING THE GOODS, BUYER MUST NOTIFY KRESS PROMPTLY IN WRITING AND MUST PERMIT KRESS TO PRESERVE EVIDENCE, TEST THE GOODS AND INVESTIGATE THE CAUSE THEREOF. BUYER SHALL GIVE KRESS PROMPT AND CONTINUING ACCESS TO THE GOODS FOR INSPECTION AND TESTING, INCLUDING TO THE ENVIRONMENT AND LOCATION OF THE GOODS, AND SHALL COOPERATE WITH KRESS BY FURNISHING ALL RELEVANT INFORMATION, DATA, TEST RESULTS, WITNESSES AND OTHER INFORMATION RELATIVE TO ANY OCCURRENCE, ACCIDENT OR CLAIMED DEFECT IN THE GOODS. FAILURE OF BUYER TO GIVE PROMPT NOTICE AS REQUIRED HEREIN OR TO COOPERATE IN THE INVESTIGATION OF ANY OCCURRENCE, CLAIM OR ACCIDENT CONCERNING THE GOODS SHALL BAR BUYER FROM ANY REMEDY. The provisions of this Section 1.3.12 shall survive termination of the Order.

1.3.13 Indemnification:

Buyer shall hold and save Kress, together with the employees, directors, officers and shareholders of Kress (herein collectively the "Indemnitees") harmless from and against any and all liability, loss, damage, cost or expense, including without limitation the fees of attorneys, paralegals, and other consultants, due to or arising out of any claim for personal injury, whether that of Buyer or third party or property damage (including without limitation any environmental liability) arising out of or in connection with the assembly, use, operation, alteration, maintenance, repair or modification of the Goods, provided that any such claim, loss, damage or expense is caused in whole or in part by: (i) any wrongful intentional act or omission of Buyer or anyone directly or indirectly employed by or serving Buyer regardless of whether or not caused in part by Kress; (ii) any negligent act or omission of Buyer or anyone directly or indirectly employed by or serving Buyer regardless of whether or not caused in part by Kress; or (iii) any alteration to or modification of the Goods to which Buyer has not specifically obtained Kress' written consent to the specific modification or alteration. For purposes of these Conditions of Sale, any rebuilding of any part of the Goods which has been undertaken by any person or entity other than Kress without the prior written approval of Kress shall be included in the definition of a modification or alteration of the Goods. In the event that a suit or other proceeding is brought or threatened in connection with any such claim, Kress shall have the right to engage counsel and take such other action at the expense of Buyer as is reasonably required to defend against such claim. Kress shall notify Buyer of such claim and, in the event that Kress elects not to engage counsel, Kress shall notify Buyer of that election and Buyer shall promptly assume the defense thereof by engaging counsel approved by Kress. In the event that Kress elects to tender the defense of any such claim to Buyer, each of the Indemnitees shall, nevertheless, have the right, at the election of each Indemnitee, to participate in the defense of any such claim and to be represented by counsel of its choice, and shall receive the complete cooperation of Buyer in connection with such participation in any such defense. If any claim or other basis for indemnification hereunder is settled, or if there shall be a judgment for the plaintiff in connection with any such claim, Buyer shall, without limiting the generality of the foregoing, indemnify and hold harmless each of the Indemnitees from and against any loss or liability by reason of such settlement or judgment. Notwithstanding anything provided herein to the contrary, Buyer shall not cause or permit any claim or other basis for indemnification hereunder to be settled without the prior written approval of Kress. In addition, Buyer shall indemnify and hold harmless each of the Indemnitees from any and all of the expenses reasonably incurred in connection with enforcing the rights to indemnity under this Section 1.3.13. Interest shall accrue at the rate of five percentage points in excess of the interest rate designated by American National Bank and Trust Company as the prime rate in effect from time to time or the maximum rate allowed by applicable law, whichever is less, and shall be payable by Buyer with respect to any items for which indemnification is provided hereunder. The obligations of Buyer under this Section 1.3.13 shall survive the termination of any Agreement or Order to which these Conditions of Sale apply.

1.3.14 Default:

Upon Buyer's failure to pay or otherwise perform in accordance with the Order, all amounts owing to Kress by Buyer under the Order and any other order or obligation of Buyer to Kress shall at Kress', option and without notice become immediately due and payable. Any payment not received by Kress on its due date shall bear interest per annum at a rate equal to five (5)

percentage points in excess of the interest rate designated by Bank One of Columbus, Ohio as its prime rate in effect from time to time or the maximum rate allowed by applicable law, whichever is lesser, from its due date until paid. In the event that Kress resorts to an attorney to collect amounts due under the Order or for the Goods, Buyer shall pay Kress all attorneys' and paralegal fees and all court costs and out-of-pocket disbursements incurred by Kress to effect collection. Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt furnished by Buyer to the delivering carrier shall constitute a further representation of solvency at the time of signing such receipt. If at any time there is a change in the financial condition or structure of Buyer arising from a change in business or market conditions or otherwise or arising from a merger, reorganization or other change in business form, or if Buyer becomes insolvent, makes an assignment for the benefit of creditors, or a petition in bankruptcy with respect to Buyer is filed, or if any lien, arising from judicial process or otherwise, is placed upon any material assets of Buyer, or if Kress reasonably deems itself insecure with respect to Buyer's ability to perform under the Order, Kress shall have the right to cancel the Order without liability on its part or to change the credit terms of the Order, including but not limited to, requiring the payment of cash in advance of delivery or the furnishing of a letter of credit in accordance with the provisions of Section 1.3.6, above. Kress reserves the right to otherwise require satisfactory security if the financial responsibility of Buyer becomes unsatisfactory to Kress. The rights and remedies afforded Kress herein shall be in addition to, and not in lieu of, rights and remedies afforded by the Uniform Commercial Code, as enacted in Illinois.

1.3.15 Security Interest:

Buyer hereby grants to Kress and Kress retains a purchase money security interest in all Goods not paid for in full, notwithstanding that the Goods have been delivered to Buyer, and Buyer shall execute and deliver to Kress, upon request at any time prior to payment in full of the purchase price, duly executed financing statements describing the Goods, and such other documents which may be requested by Kress from time to time prior to payment in full of the purchase price to evidence or perfect its security interest in any jurisdiction deemed appropriate by Kress.

1.3.16 Breach Of Contract:

Breach of contract by either party shall have no effect upon the provisions governing the risk of loss of the Goods. Section 2-510 of the Uniform Commercial Code, as enacted in Illinois, shall have no effect on the Order and unless otherwise expressly provided in the Order, Buyer shall remain obligated for all risk of loss to the Goods until their proper return to Kress pursuant to any applicable provision of these Conditions of Sale.

1.3.17 Applicable Laws:

The Order is made in and it and all matters pertaining to the Goods, including the respective rights and obligations of Kress and the Buyer, shall be governed by and construed in accordance with the internal laws of the state of Illinois, without giving effect to the conflicts of law principles thereof, in every respect, including but not limited to validity, interpretation and performance, notwithstanding that the Buyer may now or hereafter become domiciled in or a resident of another state or a foreign country other than the United States of America. To the extent that such provisions can be disclaimed, the provisions of all United Nations Conventions on the International Sales of Goods, to the extent applicable under Illinois law, shall not be deemed to constitute a part of the governing law hereunder. These terms and Conditions of Sale set forth herein are subject to any mandatory requirement, warranty, or term which may be expressed by any foreign country's law, whether Commonwealth, State or Territory and which may not be lawfully excluded in accordance with the law of such foreign country.

1.3.18 Arbitration:

All claims, disputes and other matters in question arising out of or related to the Order or any breach thereof, shall, at the option of Kress, be decided by arbitration in accordance with the then current arbitration rules of the American Arbitration Association. The award rendered by the arbitrator shall be final and judgment may be entered and enforced in accordance with the rules of the American Arbitration Association in any court having jurisdiction thereof. Any arbitration shall be conducted at a situs in the city of Peoria, Illinois; U.S.A. Notice of demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association.

1.3.19 Invalid Term:

The invalidity of any term contained in the Order shall not affect any other of its terms. The Order shall be binding on and shall inure to the benefit of Kress, Buyer and their respective successors, assigns and legal representatives.

1.3.20 Non-Waiver:

Kress' failure to enforce or declare a default or breach with respect to any particular term or condition of the Order shall not be considered a waiver of Kress' right to enforce or declare a default or breach with respect to any other term or condition or, on a subsequent occasion, with respect to that particular term or condition.

1.3.21 Alteration Of Terms And Parol Evidence:

The terms and conditions of the Order are in each instance intended by the parties as a final expression and a complete and exclusive statement of the agreement of the parties respecting Buyer's purchase of the Goods from Kress. None of the terms

and conditions contained on the Order may be modified except by a written instrument signed by an authorized officer of Kress and delivered by Kress to Buyer.

1.3.22 Confidentiality; Intellectual Property:

Buyer agrees that it shall neither disclose to third parties any Confidential Information (as defined herein) nor use any of such Confidential Information for any purpose other than to purchase and operate the Goods or any other purpose for which Kress has given its prior written consent. Except as otherwise provided herein, for the purposes of these Conditions of Sale, “Confidential Information” means and includes all information of or concerning Kress and the Goods, whether or not in writing, which has been disclosed to Buyer or which Buyer may otherwise learn during the course of discussions concerning the Order and the Goods, including without limitation the issuance of and the contents of Kress’ Quotation, Sales Contract or Sales Order Acknowledgment (if any) and any information concerning business processes, business plans, business methods, finances, know-how, inventions, trade secrets, patents, formulas, discoveries or other information of any nature whatsoever which Kress has directly or indirectly created or otherwise acquired or which is involved in the operation of the business carried on by Kress. Notwithstanding the foregoing, the term “Confidential Information” shall not include information which the Buyer can show (i) was disclosed to Buyer by Kress for the express purpose of permitting Buyer to disclose such information to third parties; (ii) was known or becomes known to the general public in the country in which Buyer is located without disclosure by Buyer or Kress; (iii) was known to Buyer before Buyer became involved in discussions with Kress concerning the Order or the Goods, as evidenced by some written document which is properly in the possession of the Buyer; or (iv) was legally acquired by Buyer from a third party and in good faith, provided that the disclosure to Buyer by the third party was not in breach of any agreement or in derogation of any confidential relationship between such third party and Kress. Without limiting the generality of the foregoing, Buyer shall not take any action which shall infringe upon any patent held by Kress or which shall cause in any manner any diminution in value of any patent or other intellectual property owned by Kress. Without limiting the generality of the foregoing, Buyer agrees that in consideration of the issuance by Kress of any Quotation to Buyer, Buyer shall maintain as confidential and not disclose or permit any employee of Buyer to disclose to any third party the fact of issuance or the contents of Kress’ Quotation, Sales Contract or Sales Order Acknowledgment (if any), regardless of whether Buyer accepts such Quotation, issues a purchase order for the goods described therein, enters into Kress’ Sales Contract or receives a Sales Order Acknowledgment from Kress.

1.3.23 Training:

Unless otherwise expressly provided in the Order, the purchase price for the Goods does not include, and Kress shall not be obligated to furnish, any training to Buyer’s personnel regarding the use and operations of the Goods.

1.3.24 Translation:

All communications pertaining to any transaction subject to these Conditions of Sale, including without limitation all documents or discussions concerning an Order, all specifications or information concerning the Goods and all communications pertaining to any arbitration proceedings or litigation proceedings as well as the actual conduct of any such proceedings, shall be made with the use of the English language and Arabic numbers. The Buyer shall arrange, at its expense, for any necessary translation to be accomplished on an accurate basis and hereby agrees to indemnify and hold Kress harmless in accordance with the provisions of Section 1.3.13 of these Conditions of Sales from any loss or damage (including without limitation attorneys’ fees and all other items of expense or liability for which indemnification is provided under such Section 1.3.13) arising out of or in connection with any translations of any such communications arranged by Buyer.