

## TERMS AND CONDITIONS

These terms and conditions of sale (“TERMS AND CONDITIONS”) relate to certain goods and services provided (“PRODUCT/S”) by Werbel Microwave, LLC, a New Jersey limited liability company, (“WERBEL”) to the purchaser of such goods and services (“CUSTOMER”). Any device(s) not manufactured by WERBEL that come under consideration for evaluation and/or repair by Werbel is herein referred to as a “REPAIR OBJECT/S”. Any additional or different terms, including but not limited to those on Customer’s purchase order, are hereby objected to and specifically rejected by WERBEL.

WERBEL hereby rejects to order confirmations referring to deviating TERMS AND CONDITIONS and respective Terms of Purchase submitted by CUSTOMER. Silence on WERBEL’S part in respect to the conditions of CUSTOMER shall under no circumstances be considered as consent or recognition.

### 1. PAYMENT

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**§1.1:** All amounts payable to WERBEL shall be in U.S. Dollars, including all applicable taxes, fees, transportation, insurance and other charges.

**§1.2 Invoicing:** WERBEL shall invoice CUSTOMER for each shipment. If all products in CUSTOMER’S purchase order are not shipped at the same time, WERBEL shall invoice CUSTOMER at the time of shipment for the PRODUCTS that are shipped.

**§1.2.1. Due Dates:** All payments are due net 30 calendar days after the date of invoice unless the parties otherwise mutually agree. Any unpaid amounts shall be subject to interest at 1.5% per month or the highest rate permitted by law, whichever is greater.

**§1.2.2:**

WERBEL reserves the right to specify alternate payment terms on quotations with regard not limited to: payment due dates, payment terms, delivery terms, progress payments, deposits and special considerations not listed, to be determined by WERBEL on a case-by-case basis, at WERBEL’S sole discretion.

**§1.3:** All checks must be payable to “Werbel Microwave LLC.”

**§1.3.1:** Any returned checks are subject to a \$50 fee.

**§1.4:** Should any action be necessary to recover any sum due to WERBEL from CUSTOMER, WERBEL shall be entitled to recover costs of such action including reasonable attorneys’ fees whether or not incurred in connection with issues of federal bankruptcy law.

**§1.5:** Shipping allowances and prices are subject to change without notice.

**§1.6:** WERBEL does not guarantee the pricing set forth in this catalog or on the WERBEL website. WERBEL shall not be held responsible for any typographical errors contained therein.

**§1.7 Title:** WERBEL retains title to all PRODUCTS until WERBEL receives full payment. CUSTOMER is responsible for any loss or damage to the PRODUCTS until WERBEL receives full payment. If CUSTOMER does not make payment in accordance with the terms of the payment specified or if WERBEL has any doubt as to the CUSTOMER'S financial responsibility, WERBEL may, at its option:

- i.) cancel the purchase order, or
- ii.) refuse to perform any further work under the purchase order unless CUSTOMER immediately pays for all PRODUCTS that have been delivered and pays in advance for all PRODUCTS to be delivered.

**§1.8:** Any remedies contained in this Section 1 shall be in addition to any remedies at equity or law.

**§1.9:** Each shipment is a separate sale. If CUSTOMER fails to pay within the timeframe stated on the invoice, WERBEL may withhold any future shipment or cancel the unperformed portion of the contract.

**§1.10:** On the basis of any counterclaims, the CUSTOMER shall not be entitled to retain payments or other obligations or offset them against WERBEL'S claims unless such counterclaims have been recognized by WERBEL or finally stated as legally binding by a court of law.

**§1.11:** WERBEL reserves the right to customize terms of payment and delivery on a case-by-case basis, at WERBEL'S sole discretion.

## **2. SHIPPING AND DELIVERY**

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**§2.1:** Shipment will be made in accordance with instructions issued by WERBEL'S shipping department.

**§2.2:** CUSTOMER assumes risk of all loss and damage resulting from any cause whatsoever when the PRODUCTS are delivered to carrier, to CUSTOMER, or to CUSTOMER'S agent, whichever occurs first.

**§2.3:** All required shipping costs, insurance, export/import duties, taxes (foreign and domestic) and any other related costs and risks consistent with the designated shipping method shall be borne by CUSTOMER for delivery of the PRODUCTS to CUSTOMER'S chosen destination.

**§2.4:** Shipping dates are approximate and not guaranteed.

**§2.5:** Partial deliveries shall be accepted by CUSTOMER and paid for at contract prices and terms.

**§2.6:** Domestic shipments shall be sent via United States Postal Service Priority Mail unless otherwise agreed upon by WERBEL and CUSTOMER. International shipments shall be sent via United States Postal Service Global Priority Mail unless otherwise agreed upon by WERBEL and CUSTOMER. For all other

shipping arrangements, CUSTOMER must provide CUSTOMER'S choice of courier, shipping account and shipping method in writing on the Purchase Order.

§2.7: WERBEL reserves the right to deviate on shipments up to  $\pm 5\%$  from quantities specified on the order for any custom or non-standard PRODUCT(S).

### **3. WARRANTY AND PRODUCT RETURNS**

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**§3.1 Scope:** All PRODUCT orders are subject to written acceptance by WERBEL or by a duly authorized agent of WERBEL. Orders accepted and processed by WERBEL are Non-Cancelable and Non-Refundable without exception. All sales are final.

**§3.2 Duration:** All PRODUCTS are covered by a Limited Warranty for a period of one year from the date of purchase which applies to defective PRODUCTS only. WERBEL expressly disclaims all other warranties of any kind, whether expressed or implied, including, but not limited to, implied warranties or merchantability and fitness for a particular purpose.

**§3.3 Returns:** WERBEL will only accept return of defective PRODUCTS, and are subject to pre-approval by WERBEL in writing with an RMA (Return Material Authorization) number issued by WERBEL before WERBEL will accept such return. Return shipments not pre-approved by WERBEL will be refused. WERBEL will inspect pre-approved returns to determine whether they are defective. Final determination(s) as to defects shall be made by WERBEL. PRODUCTS must be returned in the same or equivalent container and packaging materials in which they were originally shipped. CUSTOMER retains title to any PRODUCTS returned.

**§3.4. Return Shipping:** Return shipping or freight cost is the responsibility of CUSTOMER.

**§3.5:** If WERBEL determines a PRODUCT(S) is defective, it may repair or replace the defective PRODUCT(S).

### **4. FIELD SERVICE VISITS**

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**§4.1:** If in the event that CUSTOMER and WERBEL determine and agree in writing that a field service visit is necessary for purposes including, but not limited to: delivery of finished goods, troubleshooting and/or repair of items regardless of fault of CUSTOMER or WERBEL, training of CUSTOMER and/or employees thereof, then WERBEL shall invoice CUSTOMER a standard hourly rate for field services rendered as defined in Section 23: Billable Time, in addition to reimbursement of any and all incurred travel expenses including but not limited to: travel time, mileage, gasoline, flight ticket(s), vehicle rental(s) and lodging occurring between departure and return of involved WERBEL staff to WERBEL facility.

### **5. TOLERANCES**

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§5.1: All dimensions displayed in the WERBEL catalog, datasheets, web site or other technical drawings or documentation have a standard length dimension tolerance of  $\pm .010$ " and a standard diameter tolerance of  $\pm .005$ ", whichever is applicable. All cable assemblies have a standard cable length tolerance of  $\pm 1.5\%$  or  $3/8$ " whichever is greater.

## 6. LIMITATION OF LIABILITY

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§6.1 **Scope:** WERBEL'S liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from the manufacture, sale, delivery, resale repair or use of any PRODUCTS covered by or Furnished hereunder shall in no case exceed the lesser of the cost of repairing or replacing PRODUCTS failing to conform to the warranties connected herein, if any, or the price of PRODUCTS or part thereof which gives rise to the claim.

§6.2: In no event will WERBEL be liable for any direct, indirect incidental, special or contingent damages, including, but not limited to, damages for loss of profits, goodwill, use or other intangible loss (even if WERBEL has been advised of the possibility of such damages), resulting from:

- i.) the use or inability to use PRODUCTS purchased from WERBEL;
- ii.) the cost of procurement of substitute products resulting from any PRODUCTS purchased or obtained from WERBEL; or
- iii.) any other matter relating to products purchased from WERBEL.

## 7. U.S. GOVERNMENT CONTRACTS

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§7.1: If CUSTOMER'S order is placed under a contract with the United States Government, WERBEL agrees to comply with those contract provisions and regulations with which, pursuant to law, it must comply and of which CUSTOMER has, at the time of order placement, placed WERBEL on notice. In no event will United States Government Cost Accounting Standards apply. No provision of CUSTOMER'S contract with the government will be binding on WERBEL except as expressly set forth in this paragraph.

## 8. INDEMNIFICATION

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§8.1: CUSTOMER agrees to defend and indemnify WERBEL and its officers, directors, agents and employees of and from any and all claims or liabilities asserted against WERBEL or its officers, directors, agents and employees in connection with the manufacture, sale, delivery resale or repair or use of any PRODUCTS covered by or furnished hereunder arising in whole or in part out of or by reason of

- i.) the failure of CUSTOMER, its agents, servants, employees or customers to follow instructions, warnings or recommendations furnished by WERBEL in connection with such PRODUCTS

- ii.) the failure of CUSTOMER, its agents, servants, employees or customers to comply with all federal, state and local laws applicable to such goods, or the use thereof, including the Occupational Safety and Health Act of 1970
- iii.) the negligence of CUSTOMER, its agents, servants, employees or customers, or
- iv.) any defect, including but not limited to defects in the manufacture or design, of any PRODUCTS produced, manufactured, distributed, sold, resale, repaired or used by CUSTOMER or its agents, servants, employees or customers.

## **9. TAXES AND DUTIES**

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**§9.1:** All prices are exclusive of all taxes and import or export duties, imposed by any city, state, federal or other government authority.

**§9.2:** Liability for all taxes and import or export duties shall be assumed and paid by CUSTOMER.

**§9.3:** CUSTOMER further agrees to defend and indemnify WERBEL against all liabilities for such taxes or duties and legal fees or costs incurred by WERBEL in connection therewith.

**§9.4:** If CUSTOMER is located in New Jersey, CUSTOMER must remit sales tax with any purchase order unless a valid New Jersey Resale Certificate has been provided.

## **10. ASSISTANCE AND ADVICE**

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**§10.1:** Upon request, WERBEL in its sole and absolute discretion may furnish as an accommodation to CUSTOMER such technical advice or assistance as is available in reference to the PRODUCTS.

**§10.2:** WERBEL assumes no obligation or liability for the advice or assistance given or results obtained, all such advice or assistance being given and accepted at CUSTOMER'S sole risk.

## **11. INTELLECTUAL PROPERTY**

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**§11.1 Scope:** All designs, data, drawings, software, or other technical information supplied by WERBEL to CUSTOMER in connection with the sale of PRODUCTS shall remain WERBEL'S sole property.

**§11.2:** All specifications, drawings, designs data, information, ideas, methods, patterns, and/or inventions made, conceived, developed, or acquired by WERBEL, incident to procuring and/or carrying out the delivery of PRODUCTS to CUSTOMER will vest in and inure to WERBEL'S sole benefit.

**§11.3:** CUSTOMER agrees that it will not use in any way WERBEL'S trademarks and trade names, and it will not publish, or cause or permit to be published any statement, or encourage or approve any

advertising or practice, which may be detrimental to the good name, trademarks, goodwill or reputation of WERBEL or the PRODUCTS.

## **12. FORCE MAJEURE**

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**§12.1 Scope:** WERBEL shall not be liable for delays in delivery or failure to manufacture or deliver due to causes beyond its reasonable control, including but not limited to acts of God, acts of CUSTOMER, acts of military or civil authorities, fires, strikes, flood, epidemic, war, riot, accident, delays in transportation, or inability to obtain necessary labor, materials, components or services through WERBEL'S usual and regular sources at usual and regular prices.

**§12.2 Occurrence:** The occurrence of a Force Majeure situation shall act to suspend performance. WERBEL shall have the right to terminate any unperformed portion of the contract as a result of a Force Majeure situation. However, the duty of the CUSTOMER to pay for PRODUCT received shall never be suspended.

## **13. EXPORT COMPLIANCE**

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**§13.1:** CUSTOMER shall not, directly or indirectly, export, re-export, transfer, furnish or ship PRODUCTS in violation of any applicable export control laws or regulations of any country having jurisdiction over the PRODUCTS, including all U.S. law or U.S. Government export controls.

**§13.2:** CUSTOMER agrees, at CUSTOMER'S own expense, to comply with all applicable export laws and will, in accordance with the indemnification provisions of these TERMS AND CONDITIONS, indemnify, defend and hold WERBEL harmless from all claims against WERBEL due to CUSTOMER'S violation or alleged violation of any export laws.

## **14. GOVERNING LAW, VENUE AND JURISDICTION**

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**§14.1:** All PRODUCT purchases and these TERMS AND CONDITIONS are governed by the laws of the State of New Jersey without reference to conflict of law principles. CUSTOMER agrees to submit to the jurisdiction of the State of New Jersey with venue in Essex County in any action that may arise out of these TERMS AND CONDITIONS, and such courts will have exclusive jurisdiction over all disputes between CUSTOMER and Werbel pertaining to these TERMS AND CONDITIONS and all matters related thereto.

## **15. NON-WAIVER/SEVERABILITY**

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**§15.1:** If any provision in these TERMS AND CONDITIONS is deemed invalid, void, or for any reason unenforceable, that provision will be deemed severable and the validity and enforceability of any remaining provision will not be affected.

## **16. SURVIVAL**

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§16.1: The provisions of these TERMS AND CONDITIONS are intended to survive performance by either or both parties and shall also survive the completion, expiration, termination or cancellation of the purchase order.

## **17. ENTIRE AGREEMENT/MODIFICATION**

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§17.1 **Scope:** This agreement constitutes the entire agreement between CUSTOMER and WERBEL relating to the PRODUCTS identified herein.

§17.2: No modifications hereof shall be binding upon WERBEL unless in writing and signed by WERBEL'S duly authorized representative, and no modification shall be effected by WERBEL'S acknowledgement or acceptance of CUSTOMER'S purchase order forms containing different provisions.

§17.3: These TERMS AND CONDITIONS shall solely and exclusively apply to all sales of PRODUCTS and shall NOT be revised, modified or overridden by any terms and conditions obtained in any CUSTOMER purchase order or other documentation or communication.

§17.4: Trade usage shall neither be applicable nor relevant to these TERMS AND CONDITIONS, nor be used in any manner whatsoever to explain, qualify or supplement any of the provisions hereof.

§17.5: No waiver by either party of default shall be deemed a waiver of any subsequent default.

§17.6: WERBEL hereby rejects to order confirmations referring to deviating TERMS AND CONDITIONS and respective Terms of Purchase submitted by CUSTOMER. Silence on WERBEL'S part in respect to the conditions of CUSTOMER shall under no circumstances be considered as consent or recognition.

## **18. SPECIFICATIONS AND DATASHEETS**

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§18.1: Specification sheets, datasheets, catalogs and other marketing material put forth by WERBEL do not constitute a contract(s) of any kind.

§18.2: Specifications on all PRODUCTS are subject to change without notice.

§18.3: Electrical data plots, mechanical outline, specification, product photo and other sample material and information contained within datasheets are representative. Unit-to-unit performance and appearance may vary.

## **19. TRACEABILITY**

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§19.1 **Scope:** All PRODUCTS ship with an affixed label denoting WERBEL'S name, part number, serial number and where applicable, additional information pertinent to traceability and function of PRODUCT.

Removal, altering or tampering of this label will result in voiding of warranty and at WERBEL'S sole discretion, refusal of service to unit in question.

## **20. BOOKING/SALES ORDERS**

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**§20.1 First-Come-First-Serve:** All sales orders of PRODUCTS and/or services are booked sequentially on a first-come-first-serve basis.

**§20.2 Build-To-Order:** All of WERBEL'S products are built to the CUSTOMER'S order following receipt of a signed purchase order from the CUSTOMER.

## **21. QUOTATIONS**

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**§21.1 Availability of Materials:** Quotations issued to CUSTOMER reflect the current state of inventory at the time the quotation is issued. Materials are not placed "on hold," reserved or otherwise allocated in any way until a signed purchase order is received from the CUSTOMER.

**§21.2 Lifetime:** The life of any issued quotation shall be for 30 days following the issue date. After this time period, the quotation is considered to be expired; any and all information included within and pertaining to the quotation, including but not limited to, prices and lead times, is invalid.

**§21.3 Consigned Inventory:** Inventory provided by the CUSTOMER for use in PRODUCTS shall be maintained within WERBEL'S inventory database and stock using CUSTOMER-assigned part numbers wherever possible. If any CUSTOMER-assigned part number causes a conflict within WERBEL'S inventory database (conflict with existing part number in system, part number is too long for field, or any other reason), WERBEL may assign a different part number for internal use only.

Such inventory shall be earmarked as consigned inventory for the specific CUSTOMER and PRODUCTS in each instance and shall not be used for any other purpose. CUSTOMER may recall consigned inventory at any time for any reason. Return shipping charges are the responsibility of CUSTOMER. If inventory consists of raw materials already used in partially-built or completed assemblies, CUSTOMER must approve dismantling of such assemblies in writing prior to return of inventory. WERBEL reserves the right to charge CUSTOMER for labor involved in dismantling of assemblies to reclaim consigned inventory at a rate designated under Section 23: Billable Time.

## **22. DEPOSITS**

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**§22.1 Scope:** At WERBEL'S sole discretion, a non-negotiable, non-refundable deposit may be required immediately following CUSTOMER purchase order prior to any material procurement or work performed on the PRODUCTS. All deposits must be in U.S. funds.

## **23. BILLABLE TIME**

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**§23.1 Engineering/Design Rate:** Where applicable, engineering-related labor is billed at a standard rate of \$135.00 per hour for Engineering and design work.

**§23.2 By the Minute:** CUSTOMER will be billed for the exact number of minutes used. WERBEL does not round up.

**§23.3 Interruptions:** WERBEL shall maintain sole discretion as to whether or not an interruption during a field visit shall be billable at the standard rate, discounted rate or not at all. If WERBEL completes work early, CUSTOMER shall not be billed for overage including but not limited to, breaking of setup, packing of equipment. If CUSTOMER causes delay to a field employee of WERBEL, then CUSTOMER shall be billed.

**§23.4 Contract Assembly:** Where applicable, labor is billed at a standard rate of \$23.00 per man-hour for contract assembly.

**§23.5:** WERBEL reserves the right to bill amounts different than listed this section as deemed appropriate on a case-by-case basis, for services and projects not listed in this section, at WERBEL'S sole discretion.

## **24. DISCREPANCIES**

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**§24.1 Scope:** It is the responsibility of the CUSTOMER to ensure accuracy of purchase order. CUSTOMER must notify WERBEL of all discrepancies within 48 hours of submitting purchase order.

## **25. BLANKET ORDERS**

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**§25.1 Scope:** All orders, blanket orders and change orders must be received in writing. Verbal orders and change orders must be confirmed in writing.

**§25.2 Duration:** Blanket orders covering multiple shipments over a period of up to **12** months are permitted. Unreleased shipments at the end of the 12<sup>th</sup> month shall be released to CUSTOMER and invoiced at that time.

**§25.3 Cancellation:** In the event of an order cancellation, CUSTOMER may be subject to a restocking fee, or price adjustment for prior shipments to reflect lower quantity level on a blanket order. In addition, CUSTOMER shall be responsible for any materials, finished goods inventory, work-in-progress inventory value, engineering cost, labor, tooling and other commitments made by WERBEL in connection with the blanket order. Orders for custom or non-standard product are non-cancelable.

**§25.4 Price Adjustments:** WERBEL reserves the right to adjust pricing for any unreleased blanket order quantities to reflect changes in raw material prices or any other costs related to the blanket order.

## **26. REPAIR SERVICES**

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**§26.1:** Repair work performed on any repair object not manufactured by WERBEL is subject to the terms and conditions stated within this document wherein the terms and condition shall protect WERBEL to the fullest extent possible. WERBEL'S quotations and repair services shall be realized exclusively pursuant to the latest respective TERMS AND CONDITIONS. These TERMS AND CONDITIONS shall apply for all future repair services even if they have not been expressly confirmed.

**§26.2 Scope:** Unless otherwise agreed, the CUSTOMER is obligated to provide WERBEL with a complete description of the defect to be repaired respectively the manifestation of the defect 48 hours before WERBEL begins evaluation or repair.

**§26.2.1** WERBEL'S repair services are directed toward the expert performance of the repair work performed upon the REPAIR OBJECT. They are limited to the defect or manifestation of the defect, which has been described by CUSTOMER to WERBEL. Should WERBEL realize in the performance of the repair that the REPAIR OBJECT shows further defects requiring repair which go beyond the scope of the repair services by more than 10 % of the original scope of the repair services, WERBEL is obliged to inform the CUSTOMER in writing before WERBEL performs further repair services.

**§26.2.2** If the repair services are performed in WERBEL'S facility, the CUSTOMER shall make his decision as to whether the order shall be extended to the additional defects within 24 hours. The repair services are limited to the originally described defect if WERBEL does not obtain any written message from the CUSTOMER within that time. Should the extension of the scope of repair services be necessary to put the REPAIR OBJECT in working order, WERBEL may postpone the entire repair services and the repair services performed so far must be paid by the CUSTOMER.

**§26.2.3** In case the repair services are performed directly at the CUSTOMER, the CUSTOMER shall decide immediately and without an estimate of costs as to whether and to which extent the repair services shall be performed. If the CUSTOMER rejects the proposed scope of the repair services in these events, WERBEL may refuse the performance of future repair. The CUSTOMER must pay for the repair services performed so far including travelling expenses.

**§26.2.4** The scope of repair services and/or WERBEL'S obligation to inform the CUSTOMER about further defects in need of repair includes under no circumstances the periphery in which the REPAIR OBJECT is integrated.

**§26.2.5** If the cause of defect cannot be located despite expert performance of the repair, or if the repair cannot be completed, since necessary spare parts are not available respectively cannot be provided by WERBEL and/or if the CUSTOMER refuses to accept the necessary scope of the repair, and if these circumstances could not have been recognized at the time of the conclusion of the repair contract, WERBEL is entitled to terminate the repair contract and the CUSTOMER is obliged to pay the costs which have accrued so far.

**§26.3 Cooperation of the Customer:** If the repair services are performed at our facility the CUSTOMER shall package the REPAIR OBJECT properly, in particular provide for an appropriate packaging; for example, antistatic equipment for electronic components.

§26.3.1 The CUSTOMER arranges for the transport to WERBEL and determines the carrier/the means of transport.

§26.3.2 The delivered REPAIR OBJECT shall be accompanied by a complete list (delivery note) of the parts, which have been sent to WERBEL for repair.

§26.3.3 If the repair is performed at the CUSTOMER'S facility, the CUSTOMER is obliged, to provide WERBEL'S service staff access to the objects to be repaired, to provide appropriate premises for the repair, to furnish the necessary energy for the connection of testing equipment, to provide sufficient staff, and to provide the object to be repaired in such a way that it is operational – accept with regard to an eventual failure caused by the defect – and that particularly hardware and software, which is necessary for the operation, is available.

§26.4 **Found Good:** In the case that a REPAIR OBJECT is found to have been received in working order, with no defects found after what WERBEL considers to be a reasonable effort of evaluation and troubleshooting, the REPAIR OBJECT shall be returned to the CUSTOMER. The REPAIR OBJECT is noted as “found good,” “found ok” or with similar notation. There shall be no cancellation of the evaluation order once WERBEL has begun evaluation work. The repair object shall be protected under warranty for the standard duration outlined within this document. In this case, CUSTOMER has effectively purchased a service contract, valid for the duration expressed within the standard terms of the warranty expressed within these TERMS AND CONDITIONS.

## **27. LIABILITY FOR DATA RETENTION**

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§27.1 WERBEL'S liability for data retention is described within this section and shall apply to all sections within these TERMS AND CONDITIONS.

§27.2 **Data Retention:** All data including but not limited to, engineering drawings, PRODUCT test data, quality library, forms, e-mails and all other documentation is retained within WERBEL'S possession on data carriers and servers on and off site. WERBEL shall, under no obligation whatsoever, release any data of any form unless determined at WERBEL'S sole discretion to be required and pertinent to an issue at hand or stated as legally required by a court of law.

§27.3 **Customer Data:** All finished PRODUCTS ship with test data provided on a data carrier and/or in electronic format, delivered to the CUSTOMER at time of shipping PRODUCTS. Silence on the part of CUSTOMER shall not be interpreted by WERBEL as failure to receive said data. WERBEL retains a database of CUSTOMER-related PRODUCT test data for WERBEL'S own purposes and is under no obligation to provide access to CUSTOMER for any reason. Said database does not constitute a backup for purposes of CUSTOMER. Retention of test data on the part of CUSTOMER is the sole responsibility of the CUSTOMER following WERBEL'S sending of test data. In any event that WERBEL'S test data carrier is in any way compromised, WERBEL shall not be responsible for any loss, monetary of otherwise, on part of CUSTOMER due to compromised or lost data from WERBEL'S database.

**§27.4 Confidentiality:** WERBEL is obliged to retain full confidentiality of all data with respect to CUSTOMER information including but not limited to purchase orders, CUSTOMER part numbers (in the case of private brand label PRODUCTS) and contact personnel. CUSTOMER shall equally retain full confidentiality of any data and information with respect to WERBEL including but not limited to engineering drawings, sales orders and test procedures.

**§27.5 Data Reuse:** WERBEL reserves the right to use recorded test data for any purpose including but not limited to product releases, performance examples, sales demos and datasheets, provided that confidentiality to CUSTOMER is not breached.

**§27.6 Data Loss or Alteration:** WERBEL shall not be held liable for the loss of any data and/or the alteration of any data, which would not have been lost in case of proper data safeguarding by the CUSTOMER even if the performance of our services should have been the cause of the data loss or alteration.

**§27.7 Data of Repair Units:** Any repair work performed may alter or destroy data on data carriers. For that reason, the CUSTOMER ensures that the data existing on the repair object are copied on data carriers and are kept separately as a duplicate of the existing data.

**§27.8 Viruses:** Should the CUSTOMER'S databases be infected with virus, the CUSTOMER is obliged to inform WERBEL thereof before WERBEL begins any work that would require any access or use of data contained therein. If WERBEL'S equipment is found to be compromised by a virus determined by WERBEL to have originated from CUSTOMER, then WERBEL is entitled to invoice the CUSTOMER for any costs incurred to resume normal operation, including but not limited to the hiring of outside consultants.