

Feniex Industries, Inc.

6320 E Stassney Ln,
Building 1, Suite 175
Austin, Texas 78744



General Terms and Conditions of Sale, Service, Warranty, and Distributor Agreement

1 DEFINITIONS

1.1 Definitions. In addition to terms defined elsewhere in the Agreement, in these general terms and conditions ("**Terms and Conditions**"), the following terms shall have the following meanings:

"Affiliate" or **"Affiliates"** means any Person directly or indirectly controlled by, controlling, or under common control with either Party, including any of the foregoing which becomes an Affiliate after the date of an Order. For the purposes of the immediate preceding sentence, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "controlled" have correlative meanings.

"Applicable Law" means those laws (common or statutory), rules, regulations, codes, administrative and judicial orders and directives, rulings, interpretations, permit conditions and restrictions or similar requirements or actions of any federal, state, provincial, or local government, or any agency or executive or administrative body of any of the foregoing, in each case that govern or pertain, as of the date of the applicable Order, to (1) the Parties' respective obligations under these Terms and Conditions and any Order, (2) Customer' performance and/or Feniex's use of the Work, and (3) the health, safety and welfare of individuals working at or visiting any Feniex Facility.

"Claims" means one or more claims, demands, damages, losses, liabilities (including contractual liabilities), liens, encumbrances, government imposed fines and/or penalties, causes of action of any kind or character (including those for property damage, environmental damage, personal injury or death), obligations, costs, judgments, interest and awards (including those requiring the payment of reasonable attorneys' fees and costs of litigation), whether under judicial proceedings, administrative proceedings or otherwise, arising out of, or in any way relating to these Terms and Conditions or Customer' performance of Work under any Order, and expressly includes any claims that may be brought by, or losses suffered by, spouses, heirs, survivors, legal representatives, successors or assigns.

"Confidential Information" shall mean any and all inventions, proprietary developments, processes, materials, designs, layouts, technology, price lists, cost data, correspondence, marketing and manufacturing techniques, trade secrets, customers lists, business strategies, and any and all other proprietary information disclosed by Feniex to Distributor in connection with this Agreement.

"Customer" means any Person which enters into an Order(s) with Feniex, pays for and for whom Feniex performs Work pursuant to Order(s).

"Day" means calendar day.

"Dollars" or **"\$"** means United States dollars with respect to all Work performed (and indemnities associated therewith), unless otherwise stated in the Order(s) to the Work.

“Force Majeure Event” means any act or event that renders it wholly or partially impossible for the affected Party to perform its obligations under these Terms and Conditions or any Order, or delays such affected Party’s ability to do so, when such act or event (1) is beyond the reasonable control of the affected Party, (2) is not due to the fault or negligence of the affected Party, and (3) could not have been avoided by the affected Party by the exercise of reasonable diligence.

“Improvement” means any development, enhancement, adaptation, modification, or derivative of a Party’s goods or products, or of the processes and procedures associated with the manufacture of such goods or products or their use in any application (including any Intellectual Property associated with the foregoing), arising from or relating to the performance of Work under any Order, which would make the item to which it relates less expensive to manufacture, more effective or efficient, more useful, or more valuable, or would in any other way render the item preferable in commerce.

“Indemnify” or **“Indemnification”** means to release, indemnify, defend and hold harmless, including indemnification for reasonable attorneys’ fees and other costs and expenses incurred by a Party in enforcing its rights to indemnification or defending against any Claims with respect to which it is entitled to Indemnification.

“Intellectual Property” means all copyrights, patents, trade secrets, proprietary software or firmware or other intellectual property rights associated with or incorporated in any ideas, concepts, know-how, techniques, processes, reports, or works of authorship owned, developed or created by a Party.

“Non-Standard Products” are Products that are specially manufactured for Customer and are not generally sold to other Fenix customers.

“Orders” means one or more written purchase orders, statement of work or documentation in any other mutually agreed forms, issued by Fenix and accepted by Customer for the performance of Work.

“Person” means any legal or governmental entity and any natural person.

“Personal Data” means any information relating to an identified or identifiable Person.

“Price(s)” means the amounts to be paid by Fenix to Customer pursuant to an Order.

“Price Book” means the current Fenix price book, price list, or rate sheet applicable to the Work covered by an Order(s).

“Products” means one or more goods, equipment, materials, or other tangible items furnished by Customer to Fenix pursuant to an Order (s) (including any Products used or consumed by Fenix in performing services) and may be (a) newly manufactured or (b) assembled from new or serviceable used parts that are equivalent to new parts in performance. The term “Products” does not include Services.

“Fenix Facility” means the Fenix facility or location specified in an Order to which Customer will deliver the Products or at which Customer will perform Services.

“Fenix Group” means, individually or in any combination, Fenix, its’ Affiliates, and each of their respective officers, directors, employees, contractors, subcontractors (other than members of Customer Group), agents, Clients, invitees, heirs, successors and/or assigns.

“Security Interest” means a purchase money or other security interest, together with (i) all accessions to, substitutions and replacements for the Product, (ii) all proceeds of any and all of the Product, (iii) all accessories, attachments, parts, equipment, and repairs now or hereafter attached or affixed or used in connection with or hereafter attached or affixed or used in connection with any of the foregoing Product, and (iv) all warehouse receipts, bills of lading, and other documents of title now or hereafter covering any of the foregoing Product.

“Services” means one or more activities and services furnished by Customer to Fenix pursuant to an Order. The term “Services” does not include Products.

“Specifications” means the manufacturing drawings, diagrams, templates, schemata, and blueprints for the Products existing as of the date of the Order and any other requirements mutually agreed by the Parties. With respect to Services, “Specifications” means any specific instructions and/or other requirements expressly identified by Fenix to Customer in the Order or any other written communication.

“Standard Products” are Products that are not specially manufactured for Customer and are generally sold to other Fenix customers.

“Taxes” mean all fees or charges imposed, assessed or levied by any governmental department, agency, or other taxing authority and shall include property taxes, sales and use taxes, value added taxes, goods and services taxes and excise taxes or other charges of a similar nature, customs or other duties, harbor and port dues, demurrage, wharfage, pilotage, stevedoring, customs agent fees and other such charges and fees.

“Terms and Conditions” means these Terms and Conditions of Sale, Service, and Rental.

“Third Party” means any Person other than Customer Group or Fenix Group.

“UCC” means the Uniform Commercial Code under Article 9 of the Texas Business and Commerce Code.

GENERAL TERMS AND CONDITIONS

1.2 General Terms. As used in these Terms and Conditions, unless expressly stated otherwise, references to (1) “including” or any derivation thereof means “including, without limitation” or “including, but not limited to”, (2) “and/or” means “either or both”, (3) the singular includes the plural and vice versa, (4) references to gender include all genders, (5) references to “days” shall mean calendar days, and (6) a “party” or “Party” mean Fenix or the Customer and to the “parties” or “Parties” mean Fenix and the Customer.

2 ORDERS; CANCELLATION; RETURNS; CHANGE ORDERS; INVOICING AND PAYMENT; SECURITY INTEREST

2.1 Orders(s). From time to time, at the request of Customer, Fenix shall perform Work for Customer as specified in an Order(s). The Parties are free to issue/accept Order(s) in any written form, including purchase orders, work orders, statements of work, emails or other written communication between the Parties, regardless of format, or via oral Order(s), but, unless the Parties have entered into a separate, written, master services agreement, supply agreement, equipment rental agreement, or other contract which governs the Work, (a) each Order(s) shall be subject to these Terms and Conditions, which shall control and govern all transactions between the Parties with respect to Work performed by Fenix, whether or not these Terms and Conditions are referred to in the Order(s); (B) no other, additional or different terms and conditions in any written or oral communication with respect to a transaction for work (including the terms and conditions in any customer request for proposal, request for quote, request for bid, purchase order, or similar document) shall vary or amend these terms and conditions; and (c) Order(s) submitted by Customer orally or via email shall be followed by a purchase order or other written confirmation of the Order(s) within seven (7) days from the date of the oral or email order, failing which Fenix shall have no obligation to perform Work thereunder. In the event of a conflict between these Terms and Conditions and the terms in any Order(s), these Terms and Conditions shall control, unless the Order(s) (i) makes specific reference to and identifies (by Section and/or subsection number) to the provision(s) of these Terms and Conditions to be modified, (ii) explicitly states the intention of the Parties to affect the modification thereof, and (iii) is executed on behalf of each Party by an authorized officer of the Party. Such modifications shall be effective for that Order(s) only, and no agreement to modify these Terms and Conditions with respect to any particular Order(s) shall have the effect of varying or amending those Terms and Conditions (or any others herein) with respect to any other or subsequent Order(s). Each Order(s) shall constitute a separate agreement between the Parties. Only the Fenix legal entity performing Work under an Order(s) shall have any liability or responsibility with respect to such Work.

2.2 Cancellation of Order(s). Subject to the further provisions of this Section 1.2, Customer may cancel any Order(s), in whole or in part, prior to being notified by Feniex that the Products covered thereby are ready for delivery or the Services to be performed thereunder are complete by providing Feniex with a written notice of cancellation. With respect to the cancellation of an Order(s) for:

2.2.A Products of Feniex's, Customer shall pay or reimburse Feniex the greater of (i) a cancellation fee of twenty percent (20%) of the Price of the canceled Products, or (ii) the vendor termination fees or charges incurred by Feniex with respect to any canceled Order.

2.2.B Products which have been or are being specially manufactured or modified to Customer's specification may not be canceled once the manufacturing and/or modification process has begun without the written consent of Feniex.

2.2.C Customer shall pay or reimburse Feniex for (i) all Services performed prior to the date Feniex receives the notice of cancellation, (ii) all costs incurred by Feniex which would not have been incurred, but for the cancellation, including vendor or subcontractor termination fees or charges; and (iii) any mobilization and demobilization costs incurred by Feniex.

2.3 Return of Products. No Products will be accepted for return unless authorized by Feniex. Customer may return any Product which Feniex stocks with a thirty percent (20%) restocking charge for Standard Products and seventy percent (70%) restocking charge for Non-Standard Products if: (i) the return is within twelve (12) months of the date of original shipment to Customer; (ii) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts to be solely determined by Feniex (iii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged, (iv) meets all Local, State and Federal laws governing the type of product that can be sold or put into transit in the State in which the product is being returned and (v) the Product is returned on a freight pre-paid basis.

2.4 Change Order(s). Order Changes: Feniex charges a 10% service fee (based on product value) for any change requests made within 24 hours after order submission. Changes subject to fee can include, but are not limited to: color changes, product changes, or cancellations.

2.5 Cancellation of Orders. Feniex has the right, at any time, without cause and for any or no reason, to terminate any Order, in whole or in part, by written notice to Customer. In the event of such termination, no payment will be due to Customer if termination occurs prior to Customer' acceptance of the Order or prior to Customer' delivery or performance of any Work thereunder. If termination occurs after Customer' partial delivery or performance of the Work, Customer will be paid in full for Work satisfactorily provided prior to the date of termination, plus any reasonable and documented costs incurred by Customer as a direct result of the termination, not to exceed ten percent (10%) of the Price of the terminated Work. No further compensation shall be due to Customer.

2.5.A Feniex has the right to immediately terminate any Order for cause, in whole or in part, without any liability, by written notice to Customer, if Customer fails to (1) comply with the provisions of these Terms and Conditions and it does not cure such failure within seven days after receipt of a notice of default from Feniex, (2) comply with the Specifications set out in an Order (including failure to timely deliver or perform the Work, whether said failure occurred or was announced by Customer), (3) provide adequate assurances of future performance, or (4) if Customer becomes insolvent, files or has filed against it a proceeding in bankruptcy, or has its business or assets placed in the hands of a receiver, trustee or other assignee, or undergoes or becomes subject to any action or proceeding analogous to any of the foregoing.

2.5.B Upon receipt of a termination notice (1) Customer shall not commence any new Work nor cause Fenix to incur additional costs related to the Work, except as otherwise directed by Fenix in the termination notice, (2) Customer shall transfer title to, and deliver to Fenix, in the manner, time, and extent directed by Fenix, any completed Products, or such partially completed Products and materials, and transfer any contract rights that Customer acquired for the performance of the terminated part of the Order, and (3) Fenix shall pay the Price for the Work performed up to and including the date of termination, and reimburse the Expenses incurred by Customer up to and including the date of termination, and (4) each Party shall immediately cease the use of the other Party's Confidential Information and Intellectual Property.

2.6 Access to Fenix Facility or Work Site; QHSSE. Customer represents and warrants that all Work provided under these Terms and Conditions shall be conducted in full compliance with Applicable Law relating to the health, safety and welfare of workers and/or the protection of the environment against harm. If any Work is performed at a Fenix Facility, Customer agrees to abide by Fenix's Global Safety Policy (copy of which will be made available to Customer upon request) and any other rules or policies governing the conduct and safety of personnel having access to such Fenix Facility.

2.7 Permits and Licenses. Customer has the duty to obtain and maintain, at its sole cost and expense, such permits, licenses, and any other governmental authorizations as may be necessary in connection with the performance of Work under these Terms and Conditions and any Orders

2.8 Invoicing and Payment. Unless Customer is extended credit terms by Fenix as indicated by Fenix's order confirmation, Customer must pay all amounts for Product prior to shipment by Fenix. Where credit is being extended to Customer, all amounts due and payable on a Fenix invoice for Work shall be paid in full by Customer within thirty (30) calendar days of the issue date of a Fenix invoice for such Work. All such amounts shall be paid by wire transfer to such bank or account as Fenix may from time to time designate in writing. Customer will be responsible for a 1.5% finance charge per month, or the maximum rate legally permissible under applicable law, charged daily, on past due accounts and all expenses of collections, including reasonable attorneys' fees.

2.9 Penalty for failure to accept Goods. If the Customer has failed to pick up the Products within thirty (30) days after notification of availability of Products for shipment, Fenix may, in its sole discretion, charge interest beginning thirty-one (31) days after notification at the rate of 1% per week, or at the highest rate allowed by Applicable Law, on the Purchase Order(s) amount, calculated and compounded monthly until paid in full. The Customer also agrees to pay all reasonable legal expenses and agency commissions sustained by Fenix in pursuit of any payment which is past due. Fenix reserves the right to sell and/or restock the Products and apply any applicable re-stocking fees per Section 2.3 (Return of Products).

2.10 Audit. Fenix shall maintain complete accounting records in such detail as to permit verification of charges made to Customer for Work (including Third Party charges reimbursed by Customer) ("Records"). Records shall not include payroll, compensation, or any other personnel record or personally identifiable information regarding Fenix's employees or consultants. Fenix shall keep all Records in accordance with commonly accepted accounting practices and retain such Records for a period of two (2) years following Fenix's invoicing for the Work. Customer shall have the right, at its sole cost and expense and during regular business hours, to inspect, copy, and audit the Records of Fenix pertaining to the Work performed by Fenix in order to verify the accuracy of any invoice or payment; provided, however, that Fenix shall have the right to exclude from the Records subject to inspection (i) any trade secrets or legally privileged documents and information, (ii) any information with respect to which Fenix is under an independent obligation of confidentiality to any Third Party, and (iii) data or information with respect to the calculation of Fenix's

profit margin and overhead rates. No claim may be made by Customer with respect to amounts paid to Fenix for Work more than two (2) years after Customer has been invoiced for that Work.

2.11 Security Interest. Fenix hereby retains and Customer hereby grants to Fenix, a Security Interest in the Product until Customer has made payment in full for the Product and satisfied all of its obligations to Fenix hereunder. Customer will execute, deliver or endorse any and all instruments, documents, assignments, security agreements and other agreements and writings that Fenix may at any time reasonably request in order to secure, protect, perfect or enforce the Security Interest and Fenix's rights under this Agreement. Fenix shall have all of the rights of a secured party with respect to the Product under the UCC and other applicable laws. Upon Customer's default of any payment obligation, in addition to other rights and remedies it may have under law and equity, Fenix may exercise in respect of the Product all the rights and remedies of a secured party on default under the UCC, including, without limitation, the right to enforce the Security Interest, to retake possession of the applicable Product and to collect directly from any account obligor all amounts due Customer with respect to such Product.

2.12 Failure to Comply with Payment Terms. Until full payment in respect of the Product is received by Fenix pursuant to Section 2.10 of this Agreement, the following shall apply:

2.12.A The occurrence of any one of the following events shall offer Fenix the remedies, among others, set forth in this Agreement: (i) Customer fails to pay for any item of the Product when due and payable under this Agreement or any invoice issued in connection therewith; (ii) Customer fails or neglects to perform, keep, or observe any term, provision, condition or covenant contained in this Agreement; (iii) Customer makes any false, untrue, incomplete or misleading representation, warranty, schedule, report, or other communication to Fenix in connection with this Agreement or any transaction relating thereto; (iv) Customer enters into any arrangement, reconstruction, or composition with its creditors or any of them or suspends payment generally or is otherwise unable to pay its debts as they become due; (v) a petition is presented or an order is made or an effective resolution is passed for the winding up or the dissolution of Customer or Customer ceases to carry on business as a going concern; (vi) a receiver for Customer or any material portion of its property is appointed or steps are taken for the appointment of such receiver by any person or entity; (vii) if a bankruptcy, liquidation, insolvency or other similar proceeding is filed by or against Customer, and in the case of an involuntary proceeding, is not vacated or set aside within sixty (60) days of its commencement; or (viii) a breach or default by Customer occurs under any other agreement between Customer and Fenix or with respect to any other obligation of Customer to Fenix.

2.12.B On the occurrence of any of the events specified in Section 2.14(a) hereof, or on any other termination of this Agreement, Fenix may (i) immediately take all necessary steps to secure and/or to remove the Product from Customer, (ii) in lieu of return thereof to Fenix, at its sole election charge to the account of Customer at Fenix's then quoted Prices any of the unpaid Product as Fenix shall determine on an item-by-item basis, and/or (iii) take whatever action at law, in equity or otherwise is deemed necessary by Fenix to collect any amounts then due and payable by Customer to Fenix under this Agreement and/or to enforce performance and observance by Customer of any obligation, agreement, or covenant of Customer hereunder. In addition, in the event of default, Fenix shall have all the remedies provided under the UCC, which shall be cumulative with one another and with any other remedies which Fenix may have at law, in equity, under any agreement of any type, or otherwise. In the event of the removal of the Product from Customer by Fenix pursuant to this Section 2.14, Customer shall pay all costs and expenses in connection with any such removal of the Product, including transportation, handling, and insurance to Fenix's facilities. If Fenix shall advance or otherwise pay any of the foregoing costs or expenses for the account of Customer, Customer agrees to promptly reimburse Fenix for any such amounts so advanced or paid. In the event of any default by Customer, Customer

shall pay all costs incurred by Fenix in collecting any amounts due under this Agreement, including without limitation reasonable attorneys' fees and costs including fees and costs arising from the representation of Fenix in a bankruptcy of Customer.

3 PRICING; TAXES; SHIPMENT; TITLE

3.1 Pricing. Unless otherwise specified in the Order(s) applicable thereto, prices for Products, rates for personnel performing Services, and rental rates for Rental Equipment shall be those stated in the applicable Fenix Price Book at the time the Order(s) is entered into. Price Book prices are subject to change at any time, without notice. When prices are quoted by Fenix, the same shall be valid for thirty (30) days only, unless otherwise noted in the quotation. Not all Products listed in Fenix's Price Book are available at every Fenix location. All Product pricing is based on Fenix's standard procedures and specifications for manufacturing and testing the Product. Cost of additional labor, materials or outside services for Customer-requested modification of such procedures, specifications and/or testing will be charged to Customer at Fenix's cost (including, but not limited to, direct and indirect cost, such as engineering, travel, labor, overhead and shop supplies), plus fifteen percent (10%) administrative charge.

3.2 Preferred Pricing. Customer warrants that the Price it charges Fenix for Work will be no higher than the prices charged to other customers for contemporaneous sales of Work similar to those covered by the Order, in the same or substantially similar volumes, and under substantially similar terms and conditions, and that it will extend to Fenix the same discounts and rebates it makes available to its other customers. Customer shall promptly inform Fenix of any lower pricing levels offered by Customer to other customers, and the Parties shall promptly make the appropriate Price adjustment. Any breach of this provision by Customer shall be grounds for immediate termination of any Order by Fenix, without penalty or liability. Notwithstanding the foregoing, neither Party will be required to take any action prohibited or penalized by Applicable Law related to anti-competitive business practices.

3.3 Taxes

3.3.A Fenix and Customer are responsible for all taxes legally imposed upon their respective businesses, including taxes imposed upon their respective income, personnel or property. Such taxes are for Fenix's or Customer's account, as applicable, and each Party shall Indemnify the other from any liability with respect thereto.

3.3.B Unless otherwise stated in the Order(s), prices and rates quoted by Fenix and other charges payable by Customer are exclusive of Taxes and Duties (as those terms are defined below). If not included in the price or rates, such Taxes and Duties shall be shown as a separate line item on the invoices submitted by Fenix, are in addition to the prices or rates, and shall be for Customer's account. The term "Taxes and Duties" shall mean all fees or charges imposed, assessed or levied by any governmental department, agency, or taxing authority (a "Taxing Authority") with respect to the Work performed by Fenix and shall include property taxes, sales and use taxes, value added taxes, goods and services taxes and excise taxes or other charges of a similar nature, customs or other duties, customs agent fees and other such charges and fees.

3.3.C Each Party shall be liable for and indemnify the other Party from and against all Claims resulting from the failure of the indemnifying Party to pay any of the Taxes or Duties for which the indemnifying Party is responsible under this Section 3.9.

3.3.D The provisions of this Section 3.9 shall continue after the expiration or termination of any Order(s) or the completion of Work thereunder.

3.4 Shipment. Unless otherwise specified in the Order(s) with respect thereto, Prices for Products sold to Customer are Ex Works Fenix's Facility. Customer will pay all shipment costs. If Customer requests Fenix to

arrange for Product shipment or does not furnish Fenix with shipping instructions prior to the time Products are ready for shipment, Fenix will ship the Products to Customer, at Customer's risk, via a commercial carrier of Fenix's choosing, and charge Customer at Fenix's cost, plus fifteen percent (10%) administrative charge. All shipment dates quoted are approximate and estimated from the date of a complete Order(s). Any alteration of an Order(s) will affect the estimated delivery date. Fenix will not be liable for any failure to deliver or delays in delivery occasioned by causes beyond Fenix's control, including without limitation, strikes, lockouts, fires, embargoes, war or other outbreak of hostilities, acts of God, inability to obtain shipping space, breakdowns, delays of carriers or suppliers and governmental acts and regulations.

3.5 Title and Risk of Loss. Title and risk of loss for Products sold to Customer will pass to Customer upon delivery of the Products, Ex-Works Fenix's Facility or current standard as applicable according to the Incoterms stated on the Order(s).

4 WARRANTIES AND REMEDIES

4.1 Product Warranties.

- 4.1A** Return Merchandise Authorizations (RMA): Fenix provides an automated RMA system, which allows all RMAs to be tracked 24/7. Required Steps to Request an RMA: To return a unit and generate an RMA, fill the [warranty ticket form](#) https://share.hsforms.com/1ihOZPi4LQKKPqL-IM_wV-w44h0b also located at the footer of the Fenix.com website. The Quality Team may also be contacted directly for over the phone assistance at (512) 865-4481
- 4.1B** Returns of New Items: Fenix Industries offers a 30-day return policy on new, unused products. If products are returned within a 7-day window, Fenix waives the minimum 20% restocking fee. If the product is returned after 7 days, then the dealer will be subject to a minimum 20% restocking fee pulled from the return credit.
- 4.1C** Coverage: Fenix Industries, Inc. warrants to the original purchaser that the product shall be free from defects in material and workmanship for 5 years from the date of purchase for most products.. Fenix Industries speakers, sirens, controllers, rocker panels, AM Series Products, AI Series Products, and Torch Lights are warranted for 2 years from the manufacturing date. Merchandise returned under warranty shall be subject to factory inspection and repaired or replaced at the option of Fenix Industries. Customer negligence will void warranty. Returns of a non-defective item within seven days will be subject to a restocking fee.
- 4.1D** Returns on Items Believed to be Defective: Fenix Industries reserves the right to repair or replace the defective product(s). Original purchaser is required to [create an RMA](#) providing complete and detailed information about the product defect including but not limited to: date purchased, picture of warranty label, problem description and product configurations.
- 4.1E** RMA Shipping Logistics: Original purchaser is required to create the RMA and agrees to pay the shipping charges to return the product to Fenix Industries in Austin, TX.
- 4.1F** Repair Completion Time: Once received, defective products will be repaired or replaced and returned within 3-5 business days unless there are parts issues that require an extended lead time. The quality team will communicate the options and timelines to customers in those circumstances.

5 DISTRIBUTOR PROGRAM

5.1 Appointment And Scope Of Agreement.

- 5.1.A Fenieux hereby appoints Distributor as its non-exclusive distributor for the Products. Distributors shall use best efforts to develop the market for Products in such a way to maintain and enhance the demand therefore.
- 5.1.B Distributor is required to plan and forecast purchases in order to maintain a healthy stock level and service its customers. Distributors understand the manufacturing lead times, plans accordingly and set optimum delivery expectations.
- 5.1.C The parties may by mutual written agreement expand the definitions of Products set forth in Article 1 above, but there shall be no express or implied obligation on the part of Fenieux to expand such definition.

5.2: Duties Of Distributor, Online Listing.

- 5.2.A Distributor to act as the **non-exclusive distributor** of Fenieux Products, using best efforts consistent with a commercial endeavor, to promote, exhibit, explain, publicize and sell all the Products. Such efforts shall specifically include efforts to locate and obtain confirmed orders for the sale of Products to existing customers and to develop new business through promotions with potential and prospective customers.
- 5.2.B Distributor undertakes to promote and identify Fenieux Products in its advertising, and to offer for sale and sell such Products only with the trade names, trademarks, logos and symbols used by Fenieux in connection therewith. Distributor agrees not to use any trade name, symbol, trademark, logo or any other identifying names or mark that would be confusingly similar to or constitutes an imitation of such Fenieux trade names, trademarks, logos and symbols.
- 5.2.C By accepting its appointment hereunder, Distributor does not intend to become an employee of Fenieux, but acts as a distributor selling products manufactured by Fenieux. Distributor shall buy and resell Products as principal and for its own account, and shall have complete discretion and freedom to determine the prices at which, and the terms and conditions upon which Distributor may sell Products purchased under this Agreement.
- 5.2.D Fenieux expects distributors to abide by all safety rules, regulations and laws that govern the state in which Fenieux lights are being showcased. Any reports of criminal, dishonest, or immoral conduct or behavior activity and/or any malicious misrepresentation of facts or falsification of records will be cause for immediate distributor status termination.
- 5.2.E Distributor acknowledges that in connection with the performance of this Agreement, Fenieux may disclose to the Distributor certain Confidential Information. Distributor agrees to keep such Confidential Information strictly confidential and not to disclose such information to any other person or company.
- 5.2.F If a Distributor would like to create product bundles using Fenieux products, the entirety of the bundle will need to be made up of Fenieux products. Fenieux does not allow their products to be bundled with other brands. MAP pricing on the total bundle price is enforced.
- 5.2.G You may not remove, delete, alter, or obscure any copyright, trademark, patent, or other intellectual property or proprietary rights, notices, or labels on Fenieux Products. You may not remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, access or rights management, or security features in or protecting any Fenieux Product, and you may not disassemble, de-compile, or otherwise reverse engineer any Fenieux Product for any purpose. Any violation of the foregoing will be a material breach of this

Agreement which cannot be cured, and Fenieux will have the right to terminate this Agreement immediately upon notice.

6 PRICES, DROP SHIPMENTS, RETURNS, MAP POLICY, NET 30 ACCOUNTS

- 6.1** Prices quoted (via published price list and/or individually quoted requests) by Fenieux shall not include tax or duties payable on such goods. Cost of packaging will not be included.
- 6.2** Fenieux shall keep the Distributor reasonably informed of any information in the time for delivery of orders in process. Although Fenieux shall make reasonable attempts to process orders in a timely fashion, Fenieux shall not accept any liability for late delivery of Products or quotations. Distributor further acknowledges that in the event of a temporary reduction in capacity to fill orders (for example, as the result of a reorganization, environmental damage or otherwise), Fenieux may extend the delivery time frame.
- 6.3** After approval with initial order as explained in the Pricing Structure, Distributor performance will be evaluated on a quarterly basis. If the account is not trending towards the yearly purchases commitment established by their pricing level at any given time, **the corresponding pricing level to the actual performance will apply.**
- 6.4** International drop shipments will not be accepted. Drop shipments will only be accepted for domestic U.S. locations. A Drop Ship fee of \$10.00 per shipment applies to drop ship orders with only non-build items.
- 6.5** MAP Policy - The Distributor agrees to abide by Fenieux's Minimum Advertised Price policy ("MAP Policy") as set forth in this subsection. The Distributor agrees that it will not publish in any advertisement or other form of media, including but not limited to catalogs, mailers, promotional fliers, or Internet or web sites, a price for a Fenieux product that is under the MAP Price. The MAP Policy does not prevent the Distributor from selling a Fenieux product at any price it chooses. The MAP Policy applies only to published prices in any form of media. It does not prevent the Distributor from submitting a bid for the sale of a Fenieux product, at a price lower than it could advertise the product under the MAP Policy. **Failure to comply with this MAP Policy shall result in termination from the Distributor program.**

Fenieux MAP price policies are country-specific. Please refer to the below chart for MAP international MAP pricing.

| | International: |
|--------------------------|----------------|
| United States: | 100% MAP |
| Mexico: | 125% MAP |
| Canada: | 115% MAP |
| New Zealand / Australia: | 130% MAP |
| | 110% MAP |

MAP Guidelines, Rules and Regulations:

- What is MAP? Minimum Advertised Pricing - MAP pricing is available on the live dealer pricing sheet. - MAP is used to protect Distributors from price gouging and missing out on the profit intended for each of our Distributors
- MAP violations:
 1. Posting any marketing material below MAP
 2. Including the dollar amount off
 3. Showcasing percentage off
 4. Listing any product free

5. Packages under total MAP

- Approved MAP marketing:

Discount applied at cart without specifying amount or percentage

6.6 Net 30-day accounts will be provided to Distributors who apply for such an account by submitting a credit application. The accounting department will review the credit application submitted in full, Feniex will notify the Distributor on the status of the application within 5-7 business days. The line of credit approved and provided to a Distributor is dependent on transactional history, credit references and credit score. **All orders, sales orders or sales transactions under the net 30-day will only be processed when submitted with a formal PO (purchase order).**

7 **BRANDING RULES**

7.1 You may use the Feniex logo or name in your company's advertising. Literature and websites solely in connection with the marketing and resale of Feniex branded products. However, any use of the Feniex logo or name must be carried out in accordance with the rules specified in this document. The following restrictions apply to any use of the Feniex logo and name:

- Use original versions of the Feniex logo and only those provided to you by Feniex. Do not alter the logo in any way, combine it with other graphic elements, add a drop shadow, change its color or place it on a patterned background.
- The Feniex logo may NOT be used on any object or product. Any exceptions must be approved by Feniex in writing.
- Neither the Feniex name nor logo may be used in any manner that would imply or leave the impression that your company is a division or subdivision of Feniex, that Feniex is a division or subdivision of your company, or that any one associated or affiliated with your company is an employee or an agent of Feniex. The Feniex logo or name may not be used in any manner that would be likely to confuse any third party as to the nature of your affiliation with Feniex, which at all times is that of dealer, distributor or partner. You shall clearly state and display the name of your business and provide appropriate contact information in any medium where you use the Feniex name or logo.
- The Feniex name and logo shall not be used in any manner that violates federal, state or local law. · The Feniex logo and name may never be used in any URL, internet domain name, social media account or page name, social media profile photo or avatar, telephone caller identification or email address. · The proper way to refer to your business name is "a Feniex ("Certified Distributor," "Master Distributor," "5-Star Partner" as designated and approved in your dealer agreement). For questions on branding and acceptable use, contact sales@feniex.com.

8 **TERMS & WARRANTY**

8.1 Place orders directly at <https://www.feniex.com/user/login>. From there, log in with your dealer credentials (username and password). For questions or log-in assistance, contact Customer Support at 1.800.615.8350.

8.2 Order Processing:

Prepaid Accounts: Payment is required in full for the order to be processed and submitted into production. -
Net terms accounts: Orders will be processed and transferred into production within 1 business day, as long as the account is current and has not exceeded the credit limit.

8.3 Drop Ship Fee: A \$10 fee will be charged for all drop shipped orders containing only non-customized products. Those products include: Speakers, Controllers, Flashers, Sirens, and Surface Mounts, scene lights, brackets, etc.

- 8.4 Orders Under \$100 Fee:** Orders under \$100 in value are subject to a \$10 fee.
- 8.5 Shipping:** Feniex will charge shipping for all orders, unless a shipper account number is provided at the time of order placement.
- 8.6 Order Changes:** Feniex charges a 10% service fee (based on product value) for any change requests made within 24 hours after order submission. Changes subject to fee can include, but are not limited to: color changes, product changes, or cancellations.
- 8.7 Return Merchandise Authorizations (RMA):** Feniex provides an automated RMA system, which allows all RMAs to be tracked 24/7. Required Steps to Request an RMA: To return a unit and generate an RMA, fill the [warranty ticket form](https://share.hsforms.com/1ihOZPi4LQKKPqL-IM_wV-w44h0b) https://share.hsforms.com/1ihOZPi4LQKKPqL-IM_wV-w44h0b also located at the footer of the Feniex.com website. The Quality Team may also be contacted directly for over the phone assistance at (512) 865-4481
- 8.8 Returns of New Items:** Feniex Industries offers a 30-day return policy on new, unused products. If products are returned within a 7-day window, Feniex waives the minimum 20% restocking fee. If the product is returned after 7 days, then the dealer will be subject to a minimum 20% restocking fee pulled from the return credit.
- 8.9 Coverage:** Feniex Industries, Inc. warrants to the original purchaser that the product shall be free from defects in material and workmanship for 5 years from the date of purchase for most products.. Feniex Industries speakers, sirens, controllers, rocker panels, AM Series Products, AI Series Products, and Torch Lights are warrantied for 2 years from the manufacturing date. Merchandise returned under warranty shall be subject to factory inspection and repaired or replaced at the option of Feniex Industries. Customer negligence will void warranty. Returns of a non-defective item within seven days will be subject to a restocking fee.
- 8.10 Returns on Items Believed to be Defective:** Feniex Industries reserves the right to repair or replace the defective product(s). Original purchaser is required to [create an RMA](#) providing complete and detailed information about the product defect including but not limited to: date purchased, picture of warranty label, problem description and product configurations.
- 8.11 RMA Shipping Logistics:** Original purchaser is required to create the RMA and agrees to pay the shipping charges to return the product to Feniex Industries in Austin, TX.
- 8.12 Repair Completion Time:** Once received, defective products will be repaired or replaced and returned within 3-5 business days unless there are parts issues that require an extended lead time. The quality team will communicate the options and timelines to customers in those circumstances.
- 8.13 Ship as done shipping policy:** starting for orders placed after July 1st, 2023. Going forward, we will be shipping all items in an order as soon as they are complete and ready. This means faster delivery for you and a more seamless ordering experience. However, please note that for orders containing finished goods that you request to be held at our facility awaiting a full shipment, a 10% hold fee will be charged (blanket orders excluded). This fee helps cover the costs associated with holding the goods. Our aim is to provide efficient service while meeting your specific requirements.

9 INDEMNITY; RELEASE; WAIVER

- 9.1 Feniex RELEASE AND INDEMNITIES.** EXCEPT AS PROVIDED IN SECTIONS 6.4 AND 6.5 BELOW, Feniex AGREES TO INDEMNIFY CUSTOMER GROUP FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATING TO (I) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, AFFECTING ANY PERSON WHO IS A MEMBER OF THE Feniex GROUP, (II) LOSS OR DAMAGE TO PROPERTY OF Feniex GROUP EXCLUDING PRODUCTS AND RENTAL EQUIPMENT AFTER DELIVERY TO CUSTOMER AND (III) POLLUTION OR CONTAMINATION WHICH ORIGINATES FROM Feniex'S RENTAL EQUIPMENT ABOVE THE SURFACE OF THE EARTH OR WATER WHILE SUCH Feniex RENTAL EQUIPMENT IS IN Feniex'S SOLE POSSESSION OR CONTROL,

INCLUDING COSTS OF CLEAN UP OR REMEDIATION ASSOCIATED THEREWITH ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED BY ANY MEMBER OF Feniex GROUP UNDER ANY ORDER.

9.2 CUSTOMER RELEASE AND INDEMNITIES. CUSTOMER AGREES TO INDEMNIFY Feniex GROUP FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF, RESULTING FROM, OR RELATING TO (I) PERSONAL INJURY, INCLUDING DEATH OR DISEASE, AFFECTING ANY PERSON WHO IS A MEMBER OF THE CUSTOMER GROUP; (II) LOSS OR DAMAGE TO PROPERTY OF CUSTOMER GROUP INCLUDING PRODUCTS AND RENTAL EQUIPMENT AFTER DELIVERY TO CUSTOMER AND INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO ANY WELL BEING DRILLED OR WORKED OVER BY CUSTOMER GROUP AND LOSS OR DAMAGE TO ANY RESERVOIR OR UNDERGROUND RESOURCE AND (III) EXCEPT AS STATED IN SECTION 6.1 (III) ABOVE, POLLUTION OR CONTAMINATION WHICH ORIGINATES ABOVE OR BELOW THE SURFACE OF THE EARTH OR WATER WHICH MAY OCCUR IN CONJUNCTION WITH THE WORK, INCLUDING, BUT NOT LIMITED TO, THAT WHICH MAY RESULT FROM ANY BLOWOUT, FIRE, EXPLOSION OR OTHER CATASTROPHIC EVENT RESULTING IN A WILD WELL, OR ANY FIRE OR EXPLOSION AT THE WORK SITE, AND ALL COSTS ASSOCIATED WITH ANY OF THE FOREGOING EVENTS, LOSS OR DAMAGE TO ANY RESERVOIR, FORMATION, OR WELL BORE, AND ANY OTHER SUBSURFACE AND SUBSEA LOSS OR DAMAGE, AND/OR THE COST OF REDRILLING A WELL OR FISHING; AND/OR ANY LOSS, DAMAGE, INJURY AND/ OR DEATH SUFFERED OR SUSTAINED BY ANY THIRD PARTY RESULTING FROM ANY OF THE EVENTS DESCRIBED ABOVE.

9.3 Third Party Claims. Subject only to the provisions of Section 6.2(iii) above, each Party shall, to the full extent of its liability therefore under Applicable Law, be and remain responsible for, and shall Indemnify the other Party and all members of its Group from and against, any and all Claims resulting from or with respect to (i) bodily injury, disease, or death suffered by any Third Party, or (ii) damage to or loss of property suffered or sustained by any Third Party.

9.4 Consequential Damages Waiver.

9.4.A Notwithstanding any provision of these Terms and Conditions to the contrary, neither Party shall be liable to the other Party (or any member of the other Party's Group) for, and each Party hereby waives and releases the other Party from and against, any and all Claims for Consequential Damages (as hereinafter defined). For purposes of the foregoing, the term "Consequential Damages" shall mean and include (i) all indirect, incidental, special, punitive, exemplary, or consequential damages or consequential losses of any nature whatsoever (whether or not foreseeable), and (ii) damages or losses, whether direct or indirect, for lost product or production, lost profit or revenue, loss of data, reservoir loss or damage, loss of or damage to the well or the hole, lost business, loss of or inability to use property and equipment, losses from business interruptions, losses resulting from failure to meet other contractual commitments or deadlines, or losses from downtime of rigs, vessels or facilities.

9.4.B Without negating the preceding general exclusion of Consequential Damages, the Parties expressly agree that Claims with respect to the following shall NOT be considered Consequential Damages and are recoverable between the Parties: (i) Feniex claims with respect to amounts due it for Work or Customer's cancellation of an Order(s); (ii) damages for breaches of a Party's obligations with respect to the Confidential Information (as hereinafter defined) or Intellectual Property of the other Party, or (iii) Third Party Claims with respect to which a Party is entitled to indemnification under these Terms and Conditions.

9.5 Express Negligence. SUBJECT ONLY TO LIMITATIONS IMPOSED BY APPLICABLE LAW OR PUBLIC POLICY, THE INDEMNITIES SET FORTH IN THIS ARTICLE ARE INTENDED TO BE ENFORCEABLE AGAINST THE PARTIES IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE THEREOF, NOTWITHSTANDING ANY STATUTE, RULE, OR DIRECTIVE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNITIES BECAUSE OF THE NEGLIGENCE OR OTHER FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES. THE INDEMNITIES SET FORTH IN THIS ARTICLE APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM OR LOSS IS CAUSED BY THE SOLE,

JOINT, CONTRIBUTORY OR CONCURRENT NEGLIGENCE (IN ANY AMOUNT), GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, STRICT LIABILITY, PRODUCT LIABILITY, BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF STATUTE OR OTHER FAULT OR FORM OF LIABILITY OF ANY MEMBER OF Fenix GROUP, CUSTOMER GROUP, OR A THIRD PARTY, THE UNSEAWORTHINESS OR UNAIRWORTHINESS OF ANY VESSEL OR CRAFT, OR ANY PRE-EXISTING CONDITION.

9.6 Liability Cap. Save and except for Fenix's Indemnification obligations under Sections 6.1, and 6.2 above, which shall not be so limited, and subject to the provisions of Section 4 limiting Fenix's responsibility for breach of warranty claims, Fenix's maximum aggregate liability with respect to Claims arising out of, or in any way relating to its performance of Work under any Order(s), whether sounding in contract or tort (including negligence, gross negligence, willful misconduct, strict liability and breach of statutory duty), at law or in equity, shall be limited to the aggregate amounts paid to and received by Fenix Group during the twelve (12) month period immediately preceding the event giving rise to the Claim for all Work performed by Fenix Group, not to exceed \$1,000,000, in the aggregate, in any twelve (12) month period (the "Liability Cap"), and Customer hereby waives and releases Fenix Group from any such liability in excess of the Liability Cap.

10 INDEPENDENT CONTRACTOR RELATIONSHIP

10.1 Independent Contractors. Each Party is an independent contractor with respect to the other and is not an employee of the other Party or any of the other Party's Affiliates. Nothing in this Agreement is intended to constitute a partnership or a master and servant relationship between the Parties. Nothing in this Agreement shall be construed to create any duty to, or standard care with reference to, or liability of a Party to, any person not a party to this Agreement. Nothing in this Agreement shall be deemed to constitute any fiduciary, or special, relationship, or duty, between the Parties. Each Party may take actions hereunder that are for its own self-interest without any duty or, subject to the express terms of this Agreement, liability to the other Party.

10.2 No Representation. Neither party shall have the authority to make any agreement or commitment, or incur any liability on behalf of the other Party, nor shall either Party be liable for any acts, omissions to act, contracts, commitments, promises or representations made by the other Party, except as specifically authorized in this Agreement or as the Parties hereafter may agree in writing.

11 PRODUCT IDENTIFICATION, PACKAGING, DELIVERY

11.1 Product Identification; Packaging; Supporting Documents.

11.1.A Upon Fenix's request, all Products (and any components therein) will be stamped or marked by Customer prior to delivery to include marks or identification as requested by Fenix and specified in the applicable Order (the "Fenix Marks"). Customers' right to use Fenix Marks shall be limited to the marking of Products or otherwise as agreed to in writing with Fenix.

11.1.B All Products shall be packaged, crated, and secured for shipment by Customer in accordance with the Specifications furnished by Fenix and in a manner suitable for transportation to the Fenix Facility, so that the Products reach the delivery destination in an undamaged condition. Unless otherwise specified in the Order, the Price for the Products shall be inclusive of packaging and shipping.

11.1.C A packaging slip or note referencing Fenix's Order must accompany each Product delivery. Customer shall provide Fenix such information, certifications, material safety data sheets, certificates of origin and/or similar documentation regarding any Product (or the components used by Customer in the manufacture and assembly thereof) in accordance with Applicable Law or as requested by Fenix acting reasonably.

11.2 Delivery and Late Delivery Fees.

11.2.A Fenix shall specify in each Order the date by which it requires delivery or performance of the Work thereof.

When accepting an Order, Customer shall either (1) confirm the delivery date specified in the Order, or

(2) request an alternative delivery date, which Fenix may accept or reject, in its sole discretion. If Customer fails to timely notify Fenix of a need to defer delivery beyond the date specified in the Order, it shall be deemed to have accepted the delivery date specified therein and shall be liable, as provided below, for any late delivery or performance of the Work. The delivery date specified in the Order, or, if applicable, the alternative delivery date agreed to by the Parties is hereinafter referred to as the “**Firm Delivery Date.**” In no event shall Fenix be required to accept delivery or performance of any Work prior to or after the Firm Delivery Date.

11.2.B Customer acknowledges that the deadlines for delivery or performance of Work specified in an Order are critical and time is of the essence of these Terms and Conditions. All Work must be provided by the Firm Delivery Date. Subject only to delivery delays caused by a Force Majeure Event, Customer will be liable for (1) a late delivery fee equal to one percent (1%) of the invoice value of the delayed Work for each seven days (or portion thereof) that delivery or performance of the Work is delayed, up to a maximum late delivery fee equal to twenty percent (20%) of the invoice value of the delayed Work, (2) any costs or penalties incurred by or assessed against Fenix as a result of late delivery of the Work, and (3) any ancillary costs related to delivery or performance of the Work by faster methods.

11.2.C Customer agrees that the late delivery fees and others costs stated above are reasonable pre-estimate of the damage that Fenix will suffer as a result of any late delivery and are to be assessed as liquidated damages and not as a penalty. Fenix is entitled to pursue any and all remedies available under Applicable Law, contract and/or equity, including Fenix’s right to cancel the Order for default.

11.2.D Storage costs. Customer shall assume all costs and risk of loss associated with storing Products at Customer Designated Facility.

12 CONFIDENTIAL INFORMATION

12.1 Fenix Confidential Information. Each Party (the “**Disclosing Party**”) acknowledges and agrees that any data or information furnished or disclosed to the other Party (the “**Receiving Party**”) that describes, pertains or relates to the Work or the performance thereof, as well as data and information pertaining to purchase volumes, order patterns, delivery destinations (and relative volumes of Product delivered to and/or maintained in inventory at those destinations) and methods and details of Product shipment, packaging, and labeling (collectively “**Confidential Information**”) shall be deemed proprietary and confidential to the Disclosing Party. Without limiting the generality of the foregoing, Confidential Information shall mean and include the terms of this Agreement and any Orders, and all information regarding, detailing or describing any Fenix client contract (including information with respect to the Work performed for any Fenix client, the date upon which the Work was performed, or the work site at which the Work was performed).

12.2 Non-disclosure. Subject to the exceptions set forth in section 9.3 below, the Receiving Party agrees that:

12.2.A it shall maintain and safeguard the confidentiality of all Confidential Information received from the Disclosing Party handling and treating same with at least the same degree of care (and affording it the same protections) that Receiving Party observes and provides for its own

confidential, proprietary and trade secret information, and in all events with at least a reasonable standard of care;

12.2.B it shall share the Disclosing Party's Confidential Information internally only with those of its employees who need to know same for the purposes of performing the Work, all of whom shall be advised of and must agree to be bound by the confidentiality provisions of these Terms and Conditions;

12.2.C it shall not, without the written consent of Disclosing Party, use, copy or duplicate by any means, in whole or in part, any Confidential Information obtained from the Disclosing Party for any purposes other than performing the Work and its obligations under these Terms and Conditions or any Order; and

12.2.D it shall not, without the written consent of the Disclosing Party, disclose or provide access to any Disclosing Party's Confidential Information to any Third Party.

12.3 Exclusions. The foregoing obligations do not apply to any Confidential Information that:

12.3.A is or becomes generally available to the public through no wrongful act of the Receiving Party; was in the Receiving Party's possession prior to being provided it by the Disclosing Party and was not acquired directly or indirectly from the Disclosing Party or from others under an obligation to maintain the confidentiality thereof; is made available to Customer as a matter of right by a Third Party without obligations of secrecy, provided such Third Party did not acquire such Confidential Information directly or indirectly from Fenix;

12.3.B is independently developed by the Receiving Party, without reliance upon or reference to any Disclosing Receiving Party's Confidential Information or Intellectual Property; or

12.3.C is required to be disclosed by operation of law, judicial or administrative procedure, decree or order, or in a dispute resolution in a court of competent jurisdiction or an arbitration proceeding before a recognized arbitration Tribunal.

Confidential Information will not be deemed to be generally available to the public or in the Receiving Party's possession merely because they or combinations thereof are embraced by general disclosures generally available to the public or in Customer's possession.

12.4 Non-disclosure of Source. Even if the Receiving Party is relieved of its obligations by the exceptions listed in section 9.3 above, the Receiving Party shall not make known, or cause to be made known, that the Confidential Information was acquired from the Disclosing Party, or that there may be any similarity between such Confidential Information and other information available from any other source.

12.5 Compelled Disclosures. If the Receiving Party receives a request to disclose all or any part of the Disclosing Party's Confidential Information under the terms of a discovery request, subpoena, decree or order issued by a court or tribunal of competent jurisdiction, or by a governmental or regulatory body or agency (a "**Disclosure Request**"), the Receiving Party hereby agrees (and agrees to cause its Affiliates) promptly to notify the Disclosing Party, in writing, of the existence, terms and circumstances surrounding the Disclosure Request. If the Disclosing Party seeks a protective order, the Receiving Party agrees to cooperate fully with respect thereto. If, in the written opinion of the Receiving Party's legal counsel, disclosure of Confidential Information (or any portion thereof) is required in order for the Receiving Party to avoid sanction or penalty in connection with the Disclosure Request, said counsel shall exercise reasonable efforts, with the cooperation of the Disclosing Party if necessary, to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information.

12.6 Ownership of Confidential Information. All Confidential Information shall be and remain the sole property of the Disclosing Party, and the Receiving Party shall either destroy (and confirm such destruction in writing) or return to the Disclosing Party any Confidential Information received by the Receiving Party (and all copies, notes, extracts and summaries thereof) within seven days from the date of a written request by the

Disclosing Party. the Receiving Party may, with written notification to the Disclosing Party Fenix, retain a copy of the Confidential Information with its legal office for archival purposes only.

12.7 No Warranties. All Confidential Information disclosed under or in connection with these Terms and Conditions or any Order is provided "as is," without warranty of any kind other than the warranty of title. Without limiting the generality of the foregoing, the Disclosing Party hereby specifically disclaims with respect to its Confidential Information all other warranties, express or implied (including the implied warranties of fitness for a particular purpose and merchantability), or any warranty that its Confidential Information is correct or complete, and the Receiving Party recognizes and acknowledges that the Confidential Information disclosed to it may have errors or omissions.

12.8 Remedies. The Receiving Party acknowledges and agrees that the use or disclosure of Confidential Information in violation of this article 9 would cause serious and irreparable harm to the Disclosing Party, for which money damages would not be adequate compensation. Consequently, if the Receiving Party breaches or threatens a breach of this article, the Disclosing Party shall, in addition to all other remedies available to it at law or in equity, be entitled to a temporary or permanent injunction or a decree for specific performance, without showing any actual damage or that monetary damages would not provide an adequate remedy, and without any bond or other security being required.

13 INTELLECTUAL PROPERTY RIGHTS; IMPROVEMENTS; INDEMNIFICATION

13.1 Intellectual Property Rights.

13.1.A All Customer Intellectual Property shall be and remain the exclusive property of Customer, but to the extent any Customer Intellectual Property is incorporated into any Product (or any Improvement relating thereto) or Deliverables sold or furnished to Fenix, Customer hereby grants Fenix a non-exclusive, nonassignable, irrevocable, royalty-free, world-wide, perpetual, right and license to use Customer Intellectual Property for the purpose of using same in connection with the Work (including use of the Deliverables and/or its use or resale of the Customer Products using or incorporating same).

13.1.B All Fenix Intellectual Property shall be and remain the exclusive property of Fenix and/or its Affiliates, but to the extent any Fenix Intellectual Property is used by Customer in performing Work, such Intellectual Property (and any Improvement relating thereto) shall remain the property of Fenix, and Customer shall have only a non-exclusive, non-assignable, revocable right and license to use same for the limited purpose of performing Work. Such license shall run concurrent with and terminate with the Agreement. Except as expressly permitted under these Terms and Conditions or pursuant to an Order, Customer shall not use the names or trademarks of Fenix at any time or in any manner without first obtaining Fenix's prior written consent.

13.1.C Except as expressly stated above, neither Customer nor Fenix shall have any right or license to use, whether directly or indirectly, any of the other's Intellectual Property.

13.1.D If Fenix and Customer or their respective employees jointly develop any Intellectual Property which is not an enhancement, improvement or derivation of either Party's Intellectual Property ("**Joint IP**"), the Joint IP shall be owned by Fenix. Customer hereby grants Fenix, a revocable, non-exclusive, non-sub-licensable, non-transferrable, royalty free, right and license to use the Joint IP incorporated into the Work solely for the purpose of using such Work.

13.2 Product Improvements. Customer shall disclose to Fenix the details of any Improvement which Customer has developed or conceived and proposes to incorporate into any Product sold to Fenix, but shall not include same in any Product without the prior written approval of Fenix. Customer shall, upon request, incorporate into any customized Products any Improvement developed or conceived by Fenix.

13.3 Reverse Engineering Prohibited. Except to the extent necessary for the maintenance or repair thereof, Customer shall not (and shall not direct or permit any Third Party to) disassemble any Feniex Product(s) or Rental Equipment, or decompile, analyze or otherwise seek to reverse engineer any Feniex Product(s) or Rental Equipment (or any component part thereof) in an effort to discover its design, structure, construction, or formulation, or the firmware used or embedded therein.

13.4 Deliverables. Customer acknowledges and agrees that all Deliverables, whether made or conceived by Customer alone or jointly with Feniex, shall be Feniex's exclusive property, and Customer hereby assigns to Feniex all right, title and interest in the Deliverables, including all patents, copyrights, trademarks and trade secrets. Customer shall promptly execute and deliver to Feniex such instruments, documents, and agreements which, in Feniex's opinion, are necessary or desirable to document the transfer or assignment of such Deliverables to Feniex or to evidence Feniex's ownership thereof. Upon request, Customer shall assist Feniex in filing and prosecuting (at Feniex's expense) applications for and to acquire, maintain and enforce any and all patents, trademark registrations or copyrights (under United States or foreign law) with respect to any Deliverable. Notwithstanding the foregoing, the decision of Feniex not to seek patent, trademark or copyright protection for any Deliverable shall not diminish Feniex's exclusive and proprietary interest therein.

13.5 Intellectual Property Indemnification. The following provisions shall apply to any Claims of a Third Party that any Products (or Deliverable) sold or furnished by Customer under an Order, or any Intellectual Property used

by Customer in the performance of Services, infringes on any patent, trademark, copyright, trade secret or other proprietary right of a Third Party (an "**Infringement Claim**").

13.5.A Customer shall Indemnify Feniex Group from and against any and all Infringement Claims with respect to any Products, Services, or Rental Equipment provided by Customer under these Terms and Conditions; provided that Feniex notifies Customer, in writing, as soon as practicable, upon its receipt of a notice of any such Infringement Claim and gives Customer information and reasonable assistance in settling and defending the Infringement Claim, at Customer's sole cost and expense. To the extent an Infringement Claim is brought against Feniex based on an allegation that Products, Services, or Rental Equipment, or the use thereof infringes on any patent, trade secret or other proprietary right or a Third Party, Customer shall, at Customer's discretion, either (1) settle or defend the Infringement Claim and pay any damages awarded against any Feniex Group, (2) procure for Feniex a royalty-free right to continue using such Products, Services, or Rental Equipment; (3) replace or modify the infringing Products, Services, or Rental Equipment so it becomes non-infringing; or (4) replace the Products or Rental Equipment with a non-infringing product or equipment that is of comparable quality and performance. Customer Indemnification obligations shall not apply with respect to, and Feniex shall Indemnify Customer from and against, any Infringement Claim relating to (1) Customer's manufacture of a Product in accordance with Specifications provided by Feniex to the extent that the Infringement Claim is based on the Specifications furnished by Feniex, (2) Customer's incorporation into a Product of Improvements requested by Feniex to the extent that the Infringement Claim is based on the Improvements requested by Feniex, or (3) Feniex's alteration or modification of a Product after delivery to the extent that the Infringement Claim is based on modifications made by Feniex.

14 PERSONAL DATA PROTECTION

14.1 Compliance with Data Protection Laws. Customer shall maintain adequate internal controls and procedures to comply with Applicable Law related to the collection and processing of Personal Data, including the European Union General Data Protection Regulation 2016/679, to the extent same is applicable.

14.2 Processing of Personal Data Prohibited. Notwithstanding anything to the contrary in an Order, Customer is not authorized to and will not process Fenix Group Personal Data, unless and until Customer has first entered into a data privacy agreement as instructed by Fenix. If Fenix is required to pay any fine or penalty or is subject to any Claims as a result of Customer' failure to comply with this explicit instruction, Customer shall indemnify Fenix Group for all Claims arising as a result thereof.

14.3 International Transference of Personal Data. To the extent that any Personal Data is collected or processed by Customer in connection with the Work performed under these Terms and Conditions, Customer may only transfer such Personal Data internationally with the prior written consent of Fenix and in accordance with Applicable Law.

15 FORCE MAJEURE

15.1 Force Majeure Event. Neither Party shall be considered in breach of these Terms and Conditions or any Order if prevented from performing due to a Force Majeure Event. If a Force Majeure Event prevents performance of Work for more than thirty days, either Party may terminate the affected Orders by giving five days written notice to the other Party. Neither Party shall have any right to claim, and the other Party shall have no obligation to pay, additional compensation, costs, damages, or Expenses incurred, directly or indirectly, as a result of any Force Majeure Event.

15.2 Notice of Event of Force Majeure. The Party which is prevented from performing its obligations by Force Majeure Event shall advise the other Party immediately of its inability to meet its obligations under any applicable Order specifying the Force Majeure Event and the estimated extent to which the Force Majeure Event will impact performance and shall advise the other Party when such difficulty ceases. If either Party fails to give such advice, in writing, within seventy two hours following the occurrence of the claimed Force Majeure Event, that Party may not claim Force Majeure Event as a defense or excuse of performance hereunder for the period of time prior to such notice being given. The Party claiming a Force Majeure Event shall use commercially reasonable efforts to remove or remedy such conditions.

16 COMPLIANCE WITH LAWS

16.1 Ethical Business Conduct.

16.1.A Each Party shall comply and shall ensure that all members of its Group comply with Applicable Law in the performance of Work under these Terms and Conditions.

16.1.B All Work performed hereunder will be conducted in a fair manner with honesty and integrity, observing high standards of personal and business ethics.

16.1.C Each Party represents and warrants that neither it nor any member of its Group has made, offered or authorized, or will make, offer, or authorize any payment, gift, promise, or other advantage to or for the use or benefit of any government official, political party, family member or representative of a state owned corporation, or any other Person, where that payment, gift, promise, or other advantage will (1) comprise a facilitation payment or any other illegal payment, or (2) violate any Applicable Law related to anti-corruption, anti-kickbacks, and anti-money laundering, including the United States Foreign Corrupt Practices Act of 1977 and the United Kingdom Bribery Act 2010.

16.1.D Each Party shall comply and shall ensure that all members of its Group comply with (and maintain adequate internal controls and procedures, including due diligence procedures) Applicable Law related to anti-slavery and human trafficking, including the United Kingdom Modern Slavery Act 2015 and the United States California Transparency in Supply Chains Act of 2010.

16.2 Trade Compliance.

16.2.A Each Party shall comply and shall ensure that all members of its Group comply with Applicable Law related to import, export, anti-boycott, and sanctions laws. Without limitation, neither Party shall, directly or indirectly, sell, provide, access, export, re-export, transfer, divert, loan, lease, consign, or otherwise dispose any Products, Services, software (including source code) or technology provided hereunder to any country, entity, or Person subject to sanctions, comprehensive or list based, or export controls applicable to Fenix.

16.2.B Each Party shall prohibit the involvement in the Work provided hereunder of any entity known to be headquartered in, or directly or indirectly owned or controlled by (1) any Person national of any comprehensively sanctioned country or region, or (2) any Person identified on an applicable denied or restricted party list (“**SDN**”) if ownership or control is at or exceeds fifty percent (50%), or (3) any Person or entity owned by, or Affiliate to, a SDN. Without limitation, Customer acknowledges that Fenix will not accept any Products originating from or transported through such comprehensively sanctioned countries or regions. If Products are delivered to Fenix against this explicit instruction, such Products will be immediately returned, at Customer’s expense, and Customer shall be liable for any Claims arising as a result thereof.

16.2.B Where applicable, Customer shall provide Fenix such information, import and export classifications, certificates of manufacture, and certificates of origin of the Products (or the component parts thereof) sold to Fenix hereunder, including any documentation required by Fenix to participate in any preferential tax or tariff agreements or regimes associated.

16.3 Conflict Minerals. Customer represents and warrants that it does not use Conflict Minerals in any Products sold to Fenix hereunder. If Products containing Conflicting Minerals are supplied to Fenix, such Products will be immediately returned to Customer, at Customer’s risk and expense, without any liability to Fenix. For the purposes of this provision, “**Conflict Minerals**” means columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which originate in any country the exploitation and trade of which is determined by the United States to be financing or benefiting groups that are responsible of human rights violations.

16.4 General Compliance with Laws Provisions.

16.4.A Customer shall ensure that all contracts with its subcontractors of any tier performing Work hereunder contain compliance with laws provisions.

16.4.B Customer has a continuing obligation to promptly notify Fenix of any non-compliance with, breach, or potential breach, of any provisions of this article 15.

16.4.C If Fenix reasonably determines that Customer has breached any of the provisions of this article 15, or comprehensive sanctions are imposed on the Customer Group, or the Customer Group is designated a SDN, such breach will constitute cause for immediate termination of the Agreement and any Order, without penalty or liability.

16.4.D Customer has the duty to Indemnify Fenix Group from and against any Claims arising of, resulting from, or relating to Customer Group’s failure to comply with Applicable Law.

17 ASSIGNMENT

Neither Party shall assign its rights under these Terms and Conditions or any Order to, nor have its obligations hereunder or thereunder assumed by, any Person without the prior written consent of the other Party, whose

consent shall not be unreasonably withheld, conditioned or delayed. Subject to the preceding sentence, these Terms and Conditions shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

18 SEVERABILITY

If any provision of these Terms and Conditions are found to be inconsistent with or contrary to Applicable Law or public policy, same shall be deemed to be modified to the extent required to comply with Applicable Law or public policy (it being the intention of the Parties to enforce to the fullest extent all provisions of these Terms and Conditions and any Order) and as so modified, these Terms and Conditions shall continue in full force and effect. If such provision cannot be deemed modified automatically, the Parties shall attempt to reach agreement on a conforming modification to such provision. If any such provision cannot be modified to comply with Applicable Law, then said provision shall be deemed to be deleted from these Terms and Conditions or the Order and the remaining provisions shall remain in full force and effect.

19 WAIVER OF TERMS

No waiver by each Party of any provision of these Terms and Conditions or any Order shall be effective unless said waiver shall be in a writing signed by an authorized officer of Fenix. Fenix's failure to enforce provision of these Terms and Conditions shall in no manner affect its right to enforce the same at a later time, and the waiver by Fenix of any breach of any provision of these Terms and Conditions or any Order shall not be construed to be a waiver by Fenix of any subsequent or succeeding breach.

20 GOVERNING LAW AND DISPUTE RESOLUTION

20.1 Governing Law and Venue. This Agreement and all Orders issued hereunder shall be governed, construed and interpreted in accordance with the laws of the State of Texas, which shall apply without regard to any choice of laws or conflict of laws provisions which would direct the application of the laws of another jurisdiction. Venue for any such litigation filed shall be exclusive in the courts, state or federal, sitting in Austin, Travis County, Texas.

20.2 Attorneys' Fees and Injunctive Relief. The prevailing Party in any litigation or arbitral proceedings shall be entitled to recover, in addition to any damages or other relief awarded to it, reasonable attorney's fees, fees and expenses of the arbitrator, court costs, fees of testifying experts or consultants, and other expenses related thereto. Nothing herein shall prohibit a Party from availing itself of a court of competent jurisdiction for the purpose of injunctive relief.

20.3 United Nations Convention on Contracts for the International Sale of Goods. The Parties agree that the application of the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from these Terms and Conditions and shall not be applied to any Order hereunder.

21 SURVIVAL

The provisions of these Terms and Conditions relating to warranties, warranty remedies, Indemnification, audit, confidentiality and compliance with Applicable Law will survive its termination or expiration.