

## TERMS AND CONDITIONS OF SALE

Sales under these terms and conditions (these "Terms") are by Functional Devices, Inc., an Indiana corporation, ("Seller") to the entity named as the buyer or purchaser ("Buyer") in the documentation to which these Terms are attached or with which they are associated and are conditional upon Buyer's agreement with these Terms and only these Terms. If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to Seller, these Terms are in lieu of any terms later submitted by Buyer and Seller rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Seller tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Seller's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Buyer. Buyer's performance, or acceptance of, or payment for, any products from Seller will constitute Buyer's acceptance of these Terms exclusively. These Terms, together with any associated description of the products and quantity and price terms that are the subject of the purchase and sale transaction under these Terms constitute a "Contract." Buyer represents and warrants that any products that it purchases from Seller are for business or commercial use only and not for domestic, personal, family, or household use.

1. Description of Products. Seller agrees to sell, and Buyer agrees to purchase, the products described as part of the Contract.

2. Prices; Minimum Quantities. The prices of the products and/or services supplied by Seller are as stated in the Contract. Prices may be adjusted to the prices in effect at the time of delivery, whether as a result of fluctuations in commodity prices or otherwise. Except as otherwise stated in a Contract, all pricing is EXW (Incoterms 2020) Seller's facility or such other location as Seller specifies in a Contract.

3. Taxes and Fees. All prices are exclusive of sales, use, excise, customs, export, import, commodity and/or any other taxes. Buyer will pay all such taxes and any license fees or other charges incidental to the sale of products. Buyer will, at Seller's request, provide to Seller reasonable proof of payment by Buyer of such taxes, fees, and assessments. If Seller is required to prepay any taxes on behalf of Buyer, Buyer will promptly reimburse Seller for all such taxes paid. If provision of the products and/or services requires any documentary letter of credit or similar document, instrument, or process, Buyer shall pay all fees and costs associated therewith.

4. Payment Terms. Unless provided otherwise in writing in a Contract, payment terms are net 30 days after the invoice date unless otherwise agreed to in writing by an authorized representative of Seller. Buyer will pay any invoice issued by Seller without discount, setoff, or reduction. No discounts are allowed unless otherwise agreed to in writing by an authorized representative of Seller. Seller may, at its sole discretion, require payment by bank transfer, cash, certified check, C.O.D., or irrevocable letter of credit. All trading accounts are subject to prior approval of Seller's credit department in accordance with Seller's credit policies and practices in effect from time to time. Seller may revise the amount of credit or terms of payment at any time for any reason. Any amount due under a Contract that remains unpaid after its due date will bear interest from the date that such payment became delinquent until the date it is paid in full at the lower of 1.5% per month, which equals an annual percentage rate of 18%, or the maximum rate permitted by law. In addition, if Buyer fails to make payment when due or defaults in any other way, Seller may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer's account is current: (1) withdraw credit and suspend or cancel performance under any or all Contracts; and/

or (2) reschedule shipment. Seller may invoice separately for each shipment and, in any case, Buyer will pay for each shipment as invoiced without regard for other shipments. Buyer will pay any collection fees, legal fees, or court costs incurred by Seller to collect past due amounts.

5. Shipments. Seller will deliver EXW (Incoterms 2020) Seller's facility or such other location as Seller specifies in a Contract. Seller may select the freight carrier, and Buyer accepts carrier selection by Seller unless Buyer timely specifies in writing an alternative carrier reasonably acceptable to Seller. Delivery of products to the carrier constitutes delivery to Buyer, title to products will pass to Buyer, and Buyer will have all risk of loss or damage at that time. Any claims against Seller for shortages or non-conformance that could, with due diligence, be discovered by inspection upon receipt must be made within 10 days after receipt. Seller will package the products in accordance with Seller's standard practice. Seller may make deliveries in installments with appropriate partial invoicing issued for each such installment. Seller may, but will not be required to, shorten lead times and deliver products more quickly than originally estimated, in accordance with Buyer requests, but reserves the right to increase pricing accordingly, or impose break-in charges, for directly or indirectly affected products or shipments thereof. Each shipment of products to be delivered is a separate sale and Buyer will pay the price for each shipment without regard for any failure to deliver, or non-conformity of, any previous or subsequent shipment. Seller's breach or default in the delivery of any particular shipment will not permit Buyer the right to refuse to receive any other shipment.

6. Returns: Subject to the following and at the sole discretion of Seller, non-custom products in salable condition may be accepted for return credit within ninety (90) days after the date of original shipment by Seller. Any product return requires Seller's prior approval, and Buyer must pay return freight, properly package the returned products for shipment to ensure their protection from damage in shipment, assume risk of loss until product is delivered to and accepted by Seller. Buyer may be charged a restocking fee equal to twenty-five percent (25%) of the invoiced amount of the item returned. An approved return will be issued an RMA Number that must be displayed prominently on the outside of the shipping container. Items without a proper RMA number will be returned to Buyer, freight collect. For more information on Seller's RMA Procedure, see F1923-RMA-procedure.pdf. Changes to the RMA Procedure as posted to Seller's website shall take precedence over the language in this Section 6.

7. Cancellations. Cancellation or deferment of all or part of an order is subject to acceptance by the Seller. If accepted, any reduction in quantity of any item to less than 85% of the original item quantity is subject to a 15% cancellation charge. If an order cancellation is accepted, the Buyer will make delivery and pay for all material manufactured and in stock or in process at time of notice for such order, and for any special materials on orders for which the Seller must take delivery.

8. Security Interest. Buyer grants to Seller a security interest in the products supplied under any Contract and any proceeds thereof and accessions thereto as security for Buyer's obligations (payment and otherwise) to Seller. Seller may file any financing statement or similar document and/or take any other action permitted by applicable law to perfect and enforce such security interest and, if local law requires that a financing statement or similar document be signed or otherwise acknowledged by a debtor party, Buyer authorizes Seller to execute and deliver on Buyer's behalf any such document.

9. Termination; Default.

(a) Termination for Default. Either party may, without prejudice to its other rights or remedies, terminate a Contract by notice to the other party if: (1) the other party files a petition in bankruptcy or assignment generally for the benefit of creditors or initiates, or has initiated against it, any similar proceeding under any law with respect to creditor's rights, adjustment of debts, or similar law, becomes insolvent, becomes, or admits that it is, unable to pay its debts generally as they become due, or has a third-party manager or receiver appointed over any of its assets or (2) the other party defaults under these Terms and does not remedy the default within 30 days (10 days in the case of payment defaults) following notice by the aggrieved party.

(b) Adequate Assurance of Performance. In any circumstance where Seller has the right to demand adequate assurance of Buyer's performance (such as, but not limited to, under Section 2-609 of the Uniform Commercial Code, where applicable), Buyer will provide such assurance within a reasonable time not to exceed five days.

(c) Other Termination by Seller. If Buyer fails to pay in accordance with these Terms or any Contract or fails to comply with any provision of these Terms or any Contract, Seller may terminate any Contract as to unshipped portions of the products and terminate any applicable raw materials orders placed with its suppliers, and Buyer will remain liable for shipped products. If Seller elects to continue to make shipments after the Buyer has failed to make payment for the shipment in advance or fails to provide adequate assurances of performance, no action by Seller shall constitute a return of any default by the Buyer or in any way affect Seller's remedies for any such default.

10. Product Changes. Seller may, at any time and without notice to the Buyer, change the product(s) in any way that does not adversely affect the form, fit or function of the product(s) in any material respect. If Buyer at any time directs changes or causes Seller to make changes to the product(s), drawings, or specifications of the product(s), or otherwise wishes to change the scope of a Contract, including, but not limited to, such matters as inspection, testing, or quality control, Seller may terminate the Contract with respect to the items affected by such change(s) or reasonably change the time for performance and/or the price of product(s) to take into account the changes.

11. Assignment. Seller may subcontract the performance of any obligation of Seller under any Contract, provided only that Seller remains primarily liable for the performance of the obligation. Buyer may not assign any right or obligation under any Contract.

Seller may assign any right or obligation under any Contract and, provided only that Seller's assignee has assumed the obligation(s) of Seller, Seller will, upon such assignment, have no further liability as to the assigned obligations.

12. Limited Warranties.

(a) Limited Warranty. Except as provided for below, Products are warranted to the original end user to be free from defects in material and workmanship under normal use and conditions for ten (10) years from the date of purchase (such warranty period to be determined commencing upon the date of invoice to the end user or, if the end user cannot provide proof of invoice, then the ship date from Seller) (the "Warranty Period").

(b) The warranty does not apply to: (a) damage caused by accident, abuse, mishandling, or dropping; (b) Products which have been subjected to unauthorized repair, opened, or taken apart; (c) Products not used in accordance with directions or specifications; (d) damages exceeding the cost of such Product; (e) damages caused by lightning, water, condensation, or acts of God, and (f) damages caused to other products or systems to which the Products are attached.

(c) To the extent Seller sells commercially purchased items, which include but shall not be limited to various types of components, raw materials, cables, and assemblies for which Seller adds no customization but purchases such items solely for resale ("Commercially Purchased Items"), such Commercially Purchased Items are expressly excluded from this warranty. Seller shall deliver or ship with such items all warranty documentation received from the vendors thereof. In addition, to the extent it is permitted to do so, Seller will assign to the original end user all warranties for such Commercially Purchased Items received from the vendors thereof. Such assignment shall be effective as of delivery by Seller.

(d) Seller makes no warranty with respect to consumable or expendable items, such as batteries, or other Products with a published, customary or expected useful life of less than the Warranty Period. Seller does not assume responsibility for any specific application to which any Products are applied, including, but not limited to, compatibility with other equipment. All statements, technical information or recommendations relating to Products are based upon tests believed to be reliable, but do not constitute a guaranty or warranty.

(e) If warranty service is required during the Warranty Period, and if examination shall disclose to Seller's satisfaction that such Product was originally defective, then Seller will at its option repair or replace the product without charge upon prepaid delivery of such Product to Seller's facility with proof of date of purchase. Corrections of such defects by repair to or supplying of replacements for defective parts shall constitute fulfillment of all obligations of Seller. This warranty gives end users specific legal rights, and particular end users may also have other rights which may vary from jurisdiction to jurisdiction.

(f) Seller shall not be liable to any party for loss of profits, diminution of good will, or any other special, consequential, or incidental damages whatsoever, including for loss, damage, or expense directly or indirectly caused from the failure of Products to perform as expected. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to particular end users.

(g) EXCEPT AS SET FORTH HEREIN, SELLER DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. NO PERSON (INCLUDING ANY AGENT, DEALER OR REPRESENTATIVE OF SELLER) IS AUTHORIZED TO MAKE ANY REPRESENTATION OR

WARRANTY CONCERNING PRODUCTS EXCEPT TO REFER BUYER TO THIS AGREEMENT. BUYER WARRANTS THAT BUYER HAS NOT RELIED ON ANY OTHER WARRANTIES OR REPRESENTATIONS CONCERNING THE PRODUCTS OR THIS AGREEMENT. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to particular end users.

- (h) This limited warranty shall be null and void in the following circumstances:
- (i) Modification or repair of Product by the end user or any non-authorized service provider; or
  - (ii) Improper use or installation, failure to conduct regular maintenance or cleaning, or damage by accident or neglect, of Product by the end user or any third party; or
  - (iii) Failure of the end user or any third party to exercise caution to protect Product from damage or physical abuse; or
  - (iv) Failure by the end user to follow the Return Authorization (RA) process set forth below.
- (i) For warranty service, call factory for RA number and send such Product along with the sales receipt showing the date of purchase and a written description of the claimed defect, freight prepaid, in its original packaging or the equivalent, with the RA number prominently displayed on the outside of the shipping package, to: FUNCTIONAL DEVICES, INC., 101 COMMERCE DRIVE, SHARPSVILLE, IN 46068. Damage in transit is the end user's responsibility and may cause to void the warranty claim.

13. Disclaimers and Limitation of Liability. NOTWITHSTANDING ANYTHING IN ANY CONTRACT OR OTHERWISE TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING OUT OF, OR RELATED TO, DIRECTLY OR INDIRECTLY, (a) THE USE, SALE OF ANY GOOD OR SERVICE BY BUYER OR (b) THE PERFORMANCE OR FAILURE OF SELLER TO PERFORM UNDER ANY CONTRACT, OR (c) ANY OTHER ACT OR OMISSION OF SELLER; OR BY ANY OTHER CAUSE. IN NO EVENT WILL SELLER'S TOTAL LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE SUM PAID TO SELLER BY BUYER FOR THE GOODS OR SERVICES SUPPLIED UNDER THE CONTRACT IN CONNECTION WITH WHICH THE CLAIM ARISES. NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION. THESE LIMITATIONS OF LIABILITY APPLY NOTWITHSTANDING THAT SELLER KNEW OF, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF ANY PARTICULAR KIND OF DAMAGES AND NOTWITHSTANDING THAT ANY LIMITATION CAUSES A REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE.

14. Indemnification.

- (a) By Buyer. Buyer will defend, indemnify, and hold harmless Seller and Seller's direct and indirect parents, subsidiaries, and other affiliates, and the members, managers, directors, officers, employees, representatives, agents, and permitted assignees or successors of each of them, from and against any and all third party claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees) whatsoever that are incurred by or made against any indemnitee that arise, in whole or in part, out of or result from (i) the acts, omissions, negligence or misconduct of Buyer, (ii) any claim by any successor holder of any of the products, or any other person or entity, related to the products sold by Seller, or the purchase or use of such products, or any undertakings, acts or omissions relating to such products, to the extent such claim is not based upon a breach of an express warranty of Seller, (iii) any Buyer breach of any obligation in Sections 16 or 18; and/or (iv) any departure from, or modification

of, any specification or direction of Seller with respect to the use of the products by Buyer or any successor holder of any of the goods or services provided under any Contract. Seller will promptly give to Buyer notice of, and all pertinent information related to, any claim, suit, or cause of action that might or does lead to an indemnification obligation and will, at Buyer's request, grant to Buyer exclusive control of the defense and/or settlement of any such claim, suit, or cause of action, provided, however, that no settlement shall involve an injunction or any admission of fault or liability by the indemnitee.

- (b) By Seller. Seller will defend, indemnify, and hold harmless Buyer and Buyer's direct and indirect parents, subsidiaries, and other affiliates, and the members, managers, directors, officers, employees, representatives, agents, and permitted assignees or successors of each of them, from and against any and all third party claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, attorneys' fees) whatsoever that are incurred by or made against any indemnitee that allege that the products, or their proper use by an indemnitee, infringe upon a copyright or patent of a third party. Seller's obligations under this Section 13(b) will not apply to any goods or services, (a) not supplied by Seller, (b) used in a manner not expressly authorized by a Contract or the applicable documentation, (c) to the extent made or modified in accordance with Buyer's specifications, (d) to the extent that the alleged infringement or misappropriation results from any customizations, modifications, alterations or changes not developed by Seller, (e) combined with other products processes, or materials where the alleged infringement would not exist but for such combination. Buyer will promptly give to Seller notice of, and all pertinent information related to, any claim, suit, or cause of action that might or does lead to an indemnification obligation and will, at Seller's request, grant to Seller exclusive control of the defense and/or settlement of any such claim, suit, or cause of action, subject only to Buyer's consent (not to be unreasonably withheld, delayed, or conditioned) with respect to any settlement that purports to bind a Buyer indemnitee where the settlement involves injunction or any admission of fault or liability by the indemnitee. The indemnification provided for in this Section 13 is Seller's sole obligation, and Buyer's sole remedy, in connection with any claim that any goods or services provided by Seller infringe upon, violate, or misappropriate any right of a third party.

15. Confidentiality. This Section 14 shall apply in the event that the parties have not entered into a separate confidentiality agreement. Buyer will, notwithstanding that any Contract may have terminated, keep in confidence and prevent the disclosure to any person all information and data disclosed to it by Seller or learned by Buyer that is (a) not readily ascertainable by the public by proper means and (b) the subject of commercially reasonable efforts by Seller to maintain the information as confidential; including, but not limited to, quotes, business plans, techniques, prints, inventions, and research and development. Notwithstanding the foregoing, Buyer will not be liable for disclosure of any confidential information if the same: (i) is or becomes readily ascertainable by the public by proper means without breach by Buyer of any obligation to Seller of confidentiality; (ii) is disclosed with the prior written approval of Seller; or (iii) becomes known to Buyer from a source other than Seller without breach of these Terms by Buyer or breach by the source of any obligation of confidentiality. Seller will have no obligation of confidentiality or non-use with respect to information that Seller receives from Buyer unless such obligations are established in a separate written confidentiality agreement signed by Seller.

16. Intellectual Property. Except as expressly and particularly set forth in a separate written agreement signed by Seller, Buyer will obtain no right whatsoever in any copyright, patent, trademark, trade secret, mask work, or other intellectual property right of Seller or that Seller creates, originates, discovers, or reduces to practice, or in which Seller acquires author or other rights, whether in consequence of these Terms, any Contract, any transaction or dealing between Seller and Buyer, or otherwise. Seller reserves all such rights to itself. The parties acknowledge that, absent a specific and separate written and signed agreement between the parties expressly granting rights to Buyer, no Contract is intended to require that Seller perform any development work for Buyer or create for Buyer any work of authorship, invention, or other matter in which proprietary rights exist.

17. Export Controls. Unless an appropriate license, exemption or similar authorization has been duly obtained, Buyer shall not, nor shall Buyer authorize or permit its employees, agents, successors or assigns to, export or re-export any products to any country identified as a prohibited destination by any applicable laws or regulations. Furthermore, Buyer hereby agrees to undertake and perform all "denied party screening" or similar obligations imposed by or arising under applicable laws or regulations. Buyer agrees and acknowledges that, to the extent applicable, these commodities will be/were exported from the United States or other country of origin solely in accordance with the United States Export Administration Regulations or other export regulations applicable in the jurisdiction of origin. Any diversion contrary to U.S. or other applicable law is prohibited.

18. Governing Law; Jurisdiction; Venue; Severability. These Terms and all Contracts will be governed by and construed in accordance with the laws of the State of Indiana without regard for their conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Contract. Any action or claim arising out of or related to these Terms or any Contract may be brought only in the courts of the State of Indiana sitting in Tipton County or the United States District Court for the Southern District of Indiana, and Seller and Buyer each irrevocably consent to the exclusive jurisdiction of, and venue in, such courts. If any provision of any Contract is illegal or unenforceable such provision will be reformed to, insofar as is possible, permit it to conform with applicable law and, in any case, the remaining provisions will continue in full force and effect.

19. Use of Products. Buyer shall use, and require its employees, contractors, agents, and successor holders of the products to use, all available safety precautions, in addition to any specifically set forth in any manuals, installation instructions, drawings, material safety data sheets, technical data sheets, and/or instruction sheets, if any, furnished by Seller relating to Seller's products. If Buyer does not receive a required material safety data sheet or other safety-related materials for any product from Seller, Buyer will request them from Seller. If Buyer fails to strictly observe each and every one of the obligations set forth in this Section 18 or if Buyer's or any successor holder's use, installation, operation, possession, administration, or maintenance of, or the operation of any facility associated with, any of Seller's products is in violation of any standard or rule of the American National Standards Institute or Occupational Health and Safety Act, or other applicable workplace law, regulation, rule, requirement, practice, or standard, or if Buyer permits or suffers any other person to so use any product, Buyer will indemnify, defend, and hold harmless Seller and Seller's direct and indirect parents, subsidiaries, and other affiliates, and the members, managers, directors, officers, employees, representatives, agents, and permitted assignees or successors of each of them, from and against any all third party claims, demands, damages, actions, and causes of action, as well as any and all liability, loss, or expense of any kind, including reasonable attorneys' fees arising from, connected with or in any way pertaining to any such failure by Buyer.

20. Notification. Buyer shall notify Seller promptly, and in any event within 30 days, after any accident or failure involving Seller's products that results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining causes of such accident or failure.

21. Attorneys' Fees and Costs. Buyer will pay Seller's reasonable attorneys' fees and other costs and expenses for any legal or equitable action undertaken by Seller to enforce these Terms or the provisions of any Contract.

22. Force Majeure. Seller will not be liable for failure to deliver, or for delay in delivery of, the products to the extent arising out of or related to causes beyond its reasonable control, including, without limitation, acts of God or of the public enemy, acts of any governmental authority, fires, floods, other casualties, severe weather, pandemics, epidemics, quarantine restrictions, strikes, labor disputes or shortages of labor, embargoes, wars, riots, civil commotion, shortage of rail cars or semi-tractors and trailers, delays in transit or inability to secure necessary parts or materials (whether at all or at commercially reasonable prices), and the existence of any such event at the time of the parties enter into a Contract shall not be deemed to make any subsequent or exacerbated event foreseeable or within Seller's reasonable control. In no event will Seller be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery. If Seller is wholly or partially unable to perform because of any cause beyond its reasonable control, Seller may allocate production and deliveries among Seller's customers or may terminate the Contract without any further liability to Buyer.

23. Remedies Cumulative. All rights and remedies of Seller under these Terms and any Contract are cumulative. No pursuit or receipt by Seller of any particular remedy will constitute an exclusive election of remedies and Seller will have the benefit of all remedies available at law, in equity, or otherwise.

24. Third Parties. Except for the indemnitees under the express indemnification obligations contained in these Terms (each of whom is an express third-party beneficiary of such indemnification obligations), there are no third-party beneficiaries of any right or obligation under these Terms or any Contract.

25. Third-Party Terms. Under no circumstances will Seller be obliged or liable to Buyer or to any third party with respect to any representation, warranty, covenant, duty, or liability to any third party, whether as part of a "directed sourcing" arrangement or otherwise. Without limiting the foregoing, Seller expressly disclaims and rejects any obligation of any kind to comply with any terms or conditions of Buyer's direct or indirect customer(s), regardless of any obligation to such persons taken on by, and/or imposed upon, Buyer and regardless of whether Seller is aware of any such requirement upon Buyer. Seller will be liable to any third party, if at all, solely according to such separately negotiated, written, and signed agreement, if any, as Seller actually negotiates and executes with such third party.

26. Entire Agreement. These Terms, together with any specific terms contained in any Contract, and any separate written confidentiality agreement between the parties, embody the entire agreement between the parties with regard to the subject matter hereof and thereof and supersede all other prior agreements between the parties with regard to such subject matter, and any terms or conditions proffered by Buyer, regardless of whether such proffered terms or conditions contain any terms additional to, or different from, these Terms, are hereby disclaimed and shall have no force or effect. Neither these Terms nor any Contract may be modified, except in writing and signed by the party against whom enforcement is sought.