



# FlexLink Systems Inc.

## GENERAL TERMS & CONDITIONS



## Application

These general terms and conditions (the “Terms”) are those upon which FlexLink Systems, Inc. (“FlexLink Systems”) is willing to contract in addition to terms and conditions set out in the quotation and no addition thereto or variation therefrom shall apply unless accepted in writing by FlexLink Systems. Any tender, quotation, or acceptance of order made or given by FlexLink Systems shall be subject to the conditions set out below.

These Terms (including all quotation documents from FlexLink Systems) constitute the entire agreement between the customer and FlexLink Systems and supersede all prior communications and agreements with regard to the subject matter hereof. No reference herein to the customer's inquiry or order shall in any way incorporate different or additional terms or conditions, which are hereby objected to. No modification hereto shall be binding upon FlexLink Systems unless made in writing and signed by FlexLink Systems' authorized representative. Customer acknowledges its receipt and acceptance of these Terms. In case of inconsistencies between these Terms and the contents of the quotation, the quotation shall prevail. Quotations and tenders are open for acceptance by the customer within sixty (60) days from the date on which they are made. All orders placed with FlexLink Systems require FlexLink Systems' written acknowledgment (by mail, electronic mail or fax) before any obligation attaches to FlexLink Systems.

The word “Terms” shall, unless the context clearly indicates otherwise, include these Terms and all quotation documents from FlexLink Systems to the extent such documents constitute a legally binding agreement between the parties.

## Explanation and Interpretation

- **FlexLink components**—Refers to the FlexLink standard components as shown in the FlexLink Systems catalog, in their simplest, unassembled form. Details of the materials used in the FlexLink components are available in the FlexLink Systems catalog.
- **Safety issues**—Safety equipment will be included as specified in the quotation. The system should not be operated unless all such items are securely in position. Any additional safety issues raised by the customer will be reviewed with the FlexLink Systems project manager during design reviews as the project is progressing. Any requirements specified by the customer will be quoted as a change order. FlexLink Systems will proceed with design and implementation after approval from the customer.
- **Assembly and installation**—The term “assembly” refers to the fitting together of FlexLink Systems standard components and/or other commercially available parts and/or custom-made parts, at our facility in Allentown, PA, unless otherwise stated. The term “installation” refers to the fitting together of FlexLink Systems standard components and/or other commercially available parts and/or custom-made parts, and to the positioning of the assemblies as required at the customer's facility, as specified in this quotation. The customer will provide access to company owned tools or maintenance equipment ordinarily available at their facility (i.e. fork trucks, cranes, lifts, tools, ladders, etc.), if they are required during an installation.
- **Factory acceptance test (FAT)**—Unless otherwise specified in this quotation, the factory acceptance test will consist of a test run of the system to the extent possible to confirm basic operation, using the sample products provided by the customer at FlexLink Systems' facility.
- **System acceptance test (SAT)**—Unless otherwise specified in this quotation, the system acceptance test will consist of a four-hour test run of the system, using the sample products provided by the customer, either at FlexLink Systems' facility or at the customer's facility.
- **FlexLink information**—All the ideas, concepts, drawings, etc., included in this quotation and developed by FlexLink Systems are proprietary information and any dissemination of such information with the intent to manufacture or any dissemination external to the recipient company is prohibited. The term “assembly drawings” refers to drawings completed for engineering purposes prior to assembly and/or installation. These drawings are based on best information supplied by the customer or obtained by field measurements. The term “as-built drawings” refers to AutoCAD files, all manuals and recommended spare parts listings and the supply of as-built drawings is not included in this quotation, unless otherwise specified. If controls are purchased with the system, controls documentation will be provided in the FlexLink Systems standard format, including schematic wiring diagrams, I/O device diagrams and 2 copies of the PLC program.

- **Documentation provided**—FlexLink Systems will provide all assembly drawings, electrical and pneumatic schematics, ladder logic diagram, operational manual, preventive maintenance schedule and a recommended spare parts list. Mechanical Cad files, Operator Manuals, Maintenance Manuals, and OEM Manuals can be provided for the conveyor system. These documents will be considered “as-built” drawings and will include recommended spare parts, OEM specifications, etc. The price for these documents is not included within this proposal and will be quoted separately. If purchased, these documents will be supplied within 14 days of system delivery date.
- **Changes and cost adjustments**—The system concept and pricing are based on the information and system requirements provided by the customer prior to the date of this quotation. The concept and pricing will be subject to change in the event of any alteration in design concepts or system requirements. If changes are requested by the customer that will cause the project to exceed the quoted price or have an impact on the time plan and / or on agreed cash flow, an addendum quotation or engineering change notice (ECN) will be issued to the customer, which will require authorized signatures for acceptance. A new purchase order may also be issued for the changes, if required. FlexLink Systems will only proceed with design and implementation after written approval from the customer.
- **Delivery**—The delivery date may be extended due to, but not limited to, the following causes:
  - Customer not providing information, parts/components, auxiliary equipment or personnel when required or requested
  - Concept or specification changes
  - Unexpected long lead delivery on components integral to the design and/or specified by the customer
  - Unexpected backorder status of components
  - Progress payments not received as per payment terms
  - Any other unexpected conditions that are not directly under the control of FlexLink Systems

## Customer Responsibility

This list is provided on the understanding that it may not be all-inclusive.

- **Customer contact**—A person will be identified as the primary customer contact for the project. This individual will have overall responsibility for the project and will be the primary point of contact for the FlexLink Systems’ project manager.
- **Customer information**—The customer will provide all relative data, facts, specifications, drawings, schematics, etc. This will also include knowledge and information atypical or specific to the customer’s process or industry required to engineer, design, manufacture, install and/or setup the proposed equipment. The customer will provide access to current and/or related equipment for dimensional and information interrogation, as required. Components or assemblies may require disassembly to accurately acquire relevant information. In particular, the following information will be required:
  - Product assembly and detail drawings, including engineering specifications defining the product dimensions, tolerances and critical specifications,
  - Process specifications, including all critical process related parameters and operating characteristics
  - In process component part information identifying any feature, condition or tolerance, which is not on the part print but must be accommodated by the proposed system
  - Formulas, calculation formats, software, practices or methods which the customer expects to be a part of or which can impact system acceptance
  - All plant or facilities drawings, floor space requirements and site survey information required for FlexLink Systems’ engineering
  - Inspection data required for system development and/or acceptance
  - AutoCAD files with the customer’s title block and drawing organization requirements

Should any of this information be changed during course of the project, the customer will provide the updated information to FlexLink Systems as soon as it becomes available. FlexLink Systems will treat all such information received as confidential.

- **Sample product**—The customer will provide sample products to FlexLink Systems at no charge, for design and development, system testing and acceptance. Packing and shipment of product to and from FlexLink Systems will be directed by the customer and at customer expense. If some or all the customer products are unavailable for system testing and/or acceptance, FlexLink Systems will not be responsible for the functionality of the system. If the customer requests shipment of the system or that production be run on the system before FlexLink Systems has completed testing and/or acceptance on all products, the system will be considered accepted by the customer as is. This quotation is contingent on sample evaluation. Sample parts must be supplied for system design, assembly and debug. FlexLink Systems cannot accept responsibility for the proper function of the system when handling products other than those described in this quotation. Any

changes to the product(s) to be handled on the system after the date of this quotation or during the course of the assembly of the system may result in additional charges. It is assumed that the sample products will be clean, separated, and dry of oil and without contaminants.

- **Auxiliary components/equipment**—The customer will provide any auxiliary components and equipment required to FlexLink Systems under the same terms and conditions as specified above for sample products.
- **System acceptance test (SAT)**—If included as part of the quotation at the customer site, the customer will provide all the necessary personnel (i.e., operators, material handlers, personnel to conduct data recording and analysis of acceptance testing activities, etc.) at no charge, for the system acceptance test.
- **Installation**—If included as part of the quotation, the customer will provide the building in which the system is to be installed, approved for occupancy and ready for the installation with any obstacles removed. The installation area will have all utilities functional and otherwise be ready for the equipment setup on the scheduled delivery date. A telephone will be located inside the installation area, easily accessible and compatible for modem transmissions. Unless otherwise specified in this quotation, the customer will be responsible for the packing of the system and its transportation to site. The customer will provide riggers/professional movers and equipment, as required, to unload the system and to take it from the delivery vehicle to a position on the floor near the point of installation. De-palletizing the system will be the customer's responsibility but this will be conducted under the direction of the installation team provided by FlexLink Systems. Disposal of packing materials is the customer's responsibility. The customer will provide power drops to the main electrical panel(s) provided by FlexLink Systems, and clean, dry, compressed air drop(s) to the main header(s) provided by FlexLink Systems. The customer shall provide FlexLink Systems and its employees, agents and contractors uninterrupted access to the building and work area for installation of the system. The customer is aware that any delays or interruptions (due to any delay other than that caused solely by FlexLink Systems, its agents or contractors) shall be the responsibility of the customer, and the customer shall be liable for any additional charges or expenses incurred. Unless otherwise stated in this proposal, all FlexLink Systems employees, agents and contractors are non-union. Union labor can be provided, at an additional cost to the customer. All licenses, inspections and permits are the responsibility of the customer.

## *Terms of payment*

- (A) On credit accounts approved by FlexLink Systems unless otherwise agreed, the terms of payment by the customer shall be due upon receipt from date of invoice.
- (B) Where credit has not been approved by FlexLink Systems, terms of payment will be cash in full at time of order.
- (C) Time of payment and performance of the customer's other obligations hereunder shall be the essence of the parties' contract, and FlexLink Systems shall be entitled to charge interest at the rate of one and a half percent (1.5%) per month on all overdue accounts. FlexLink Systems reserves the right to postpone fulfillment of its own obligations or to suspend work until such overdue payment is made. The customer shall not make any deductions or set-offs, and all amounts shall be payable in U.S. \$.
- (D) FlexLink Systems reserves the right to withhold deliveries if:
  - i. The customer shall fail to comply with any request for payment made by FlexLink Systems at any time prior to delivery, irrespective of whether the order has been accepted on credit terms or otherwise;
  - ii. Payment for previous deliveries / purchase orders has not been made on the due date; or
  - iii. Customer is in default of any obligation hereunder.

## *Pricing*

(A) Prices are quoted Ex-Works FlexLink Systems' facility (per INCOTERMS 2010) unless otherwise stated. Unless the customer requests specific shipping method or route in writing, FlexLink Systems shall determine shipping means and the customer shall pay the carrier(s). Although FlexLink Systems may insure shipments, this is for FlexLink Systems' sole benefit. Customer shall have no claim on FlexLink Systems' insurance. Customer is advised to insure the goods for their full value. Notwithstanding any agreement to pay freight or anything else to the contrary, delivery of products purchased hereunder to a carrier shall constitute delivery to the customer and be determinative of the date and time of shipment and all risk of loss or damage shall be borne by the customer. If the customer fails to accept the goods from the carrier, FlexLink Systems shall be



entitled to claim payment from the customer. FlexLink Systems may thereafter arrange for storage, with the risk and the cost, including insurance costs, to be borne by the customer (and the customer agrees to pay such amounts upon demand).

(B) Prices indicated are based on the prices in effect as of the date hereof. Unless otherwise stated in writing, FlexLink Systems' prices do not include sales, excise, value-added or other taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, value-added or other tax applicable to the manufacture, sale, purchase or use of the products hereunder shall be paid by the customer, or in lieu thereof, the customer shall provide FlexLink Systems with a valid tax exemption certificate acceptable to the taxing authorities.

(C) Prices quoted herein are valid for a period of sixty (60) days from the date of this quotation. After that date, the customer must reaffirm pricing with FlexLink Systems. FlexLink Systems reserves the right to requote should any changes to this quotation be requested or the original time expire.

(D) Special packaging and/or handling expenses will be paid by the customer if applicable.

## ***Delivery***

Dates quoted for delivery and performance are subject to confirmation at the time the order is placed and are based from receipt of purchase order via mail, electronic mail or fax and down payment if applicable.

The customer shall notify FlexLink Systems in writing of all necessary forwarding instructions in due time. In the event of delay in such instructions, the customer shall pay the costs and expenses including charges for storage occasioned thereby, and FlexLink Systems shall be entitled to arrange transport and storage at the customer's expense and risk at suitable alternative premises to those of FlexLink Systems. It is understood that deliveries will be made in accordance with FlexLink Systems' regular production schedule. Every reasonable effort will be made to meet the customer's required delivery dates but FlexLink Systems will not be liable for damages or be deemed to be in default by reason of any failure to deliver or delay in delivery due to any preference, priority, allocation or allotment order issued by the Government, whether Federal, State or local, or causes beyond its control including, but not limited to, Acts of God or a public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, severe weather, unavailability of materials or shipping space, delays of carriers or suppliers or delays of any subcontractors. Should delay in delivery be caused by any of the circumstances mentioned in this paragraph, or others beyond FlexLink Systems' control, such extension of the delivery period shall be granted as is reasonable under the circumstances of the case.

Shipments under these Terms shall be at all times subject to the approval of FlexLink Systems' credit department. FlexLink Systems reserves the right, at any time, to revoke any credit extended to the customer because of the customer's failure to pay for any products when due or for any other reason deemed good and sufficient by FlexLink Systems and in such event, all subsequent shipments shall be paid for prior to or at delivery at FlexLink Systems' option.

FlexLink Systems reserves the right to make delivery installments, unless otherwise expressly stated herein. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of an installment shall not relieve the customer of the obligation to accept remaining deliveries.

Title to goods purchased shall pass upon FlexLink Systems,' receipt of payment in full.

## ***Cancellation***

No cancellation or variation of an order will be accepted by FlexLink Systems other than by express agreement in writing, and FlexLink Systems reserves the right to charge for materials obtained, work done, costs incurred, and loss of profit. In no case can cancellation be recognized or accepted within thirty (30) days prior to the agreed delivery date of the materials. A purchase order placed on the basis of this quotation may be canceled by the customer up to thirty (30) days prior to the estimated ship date, provided that the customer agrees to compensate FlexLink Systems for all losses resulting from such cancellation, including all engineering and development costs, labor and material costs already incurred as of the date of cancellation, and the cost of dismantling and restocking usable components, and loss of profit. In the event FlexLink Systems consents in writing to cancellation after such 30 days, the customer shall pay FlexLink Systems at FlexLink Systems' option, the following as liquidated damages:



- (a) Invoice price of all products which have been identified to the parties' contract, whether such products have been delivered to the customer or not.
- (b) Actual costs incurred by FlexLink Systems for products not completed which are allocable to the balance of the parties' contract, including the cost of discharging FlexLink Systems' liabilities which are so applicable, and the costs of materials on hand, labor and overhead, which were acquired or produced or incurred in connection with partially finished work and materials.
- (c) A reasonable allowance for profit in connection with products called for under the parties' contract, but with respect to which product has not yet begun at the time of cancellation.
- (d) Reasonable costs incurred by FlexLink Systems including accountants and attorneys' fees, if any, in making any termination settlement hereunder.

On products fabricated, manufactured or produced to individual customer requirements, drawings, specifications or design, FlexLink Systems reserves the right to fabricate, manufacture or produce the entire quantity ordered in one production run, although FlexLink Systems shall attempt to make shipments will be made in accordance with the customer's requested schedule. In the event of cancellation of such non-standard products, any raw materials, components, subassemblies or finished assemblies on quantities equivalent to the full production run for the entire quantity ordered plus normal overrun shall be considered as part of applicable cancellation charges.

### *Descriptions, Drawings, Data, and Confidential Information*

- (A) As part of its commitment to quality, FlexLink Systems reserves the right to change and improve the design of some or all of the component parts included in its quotation and thereafter supply accordingly without impact to the system functionality.
- (B) All drawings, documents, and other information supplied by FlexLink Systems are supplied on the express condition that the customer shall not, without the written consent of FlexLink Systems:
  - (i) give away, lend, exhibit or sell such drawings or extracts therefrom or copies thereof; or
  - (ii) use them in any way except for the purpose of installing, or operating the materials for which they are issued.
- (C) Illustrations, weights, measures, temperatures, capacities, and performance schedules contained in FlexLink Systems' printed sales brochures and sales literature form no part of these Terms. The customer shall be responsible for the accuracy of all information supplied by it, and FlexLink Systems shall be under no obligation to check the accuracy thereof.
- (D) Copyright in respect of all drawings and other documents prepared by FlexLink Systems shall vest in and remain the property of FlexLink Systems. No intellectual property rights are implied or granted to the customer by these Terms. The customer shall acquire no right, title or interest in any tangible or intangible property, patent, copyright, trademark or other intellectual property of FlexLink Systems or its affiliates. The customer may not use, except as required by applicable regulations or law, the name or any mark of FlexLink Systems or its affiliates without prior, express, written consent, which may be withheld at FlexLink Systems' sole discretion. The customer may be provided with certain information about FlexLink Systems' and its affiliates' products and operations, including but not limited to technical information, know-how, locations and the products the FlexLink group manufactures, which are proprietary to FlexLink Systems or its affiliates and confidential in nature. Therefore, the customer undertakes not to use, disclose or reveal to any third parties and to consider and treat as confidential all information and data communicated hereunder from FlexLink Systems or its agents. This limitation shall be binding on the customer, its employees, agents, permitted successors and assigns. The customer shall be responsible to obtain compliance by all such parties.

### *Limited Warranty*

Unless specifically addressed in the system quotation, the system's compliance with applicable legal requirements (including but not limited to applicable OSHA regulations) are the sole responsibility of the customer. FURTHER, THE REMEDIES STATED HEREIN SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST FLEXLINK SYSTEMS.

Goods manufactured by FlexLink Systems shall conform to printed specifications, shall be fit for the ordinary purposes for which such goods are used, and shall be free of defects in material and workmanship for a period of the lesser of one (1) year from the date of shipment or 2000 hours of operation from the date of delivery. FlexLink Systems does not warrant the product against environmental effects which may cause premature wear to the components. The warranty on components not manufactured by FlexLink Systems is limited to the warranty provided by the original manufacturer of said components.



- (a) FlexLink Systems may at its discretion repair, replace or give the customer credit for such defective products.
- (b) Notwithstanding anything herein to the contrary, FlexLink Systems shall have no liability for alleged defects with the products which are not specified in written notice from the customer to FlexLink Systems within twelve (12) months from the date of shipment of goods, excluding wearing parts. Wearing parts shall not be the responsibility of FlexLink Systems in any event.
- (c) FlexLink Systems shall have no liability under this Limited Warranty unless the customer has paid in full for the products. Further, this Limited Warranty is expressly contingent on the customer's delivery to FlexLink Systems all costs prepaid, the defective part(s) within twelve (12) months of shipment to the customer, together with a written statement specifying the alleged defect(s). Any replacement part(s) shall be shipped to the customer on a C.O.D. basis.
- (d) FLEXLINK SYSTEMS SPECIFICALLY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, EXCEPT AS STATED EXPLICITLY IN THESE TERMS. FLEXLINK SYSTEMS DISCLAIMS THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Components that are not in conformance with the description found in the purchase order are returnable for credit or replacement provided FlexLink Systems is advised in writing within thirty (30) days of shipment of such non-conformance and written authorization is given by FlexLink Systems.

FlexLink Systems shall not be responsible for repair or replacement of items which have been subject to neglect, accident, or improper use, or which have been altered by other than personnel authorized by FlexLink Systems.

FlexLink Systems shall not be responsible for damages or injuries caused as a result of incorrectly assembled parts or devices that have been installed by personnel not authorized by FlexLink Systems.

FlexLink Systems' liability and the customer's remedy for breach of warranty or otherwise is expressly limited to the replacement of any products sold herein under which FlexLink Systems determines, by laboratory examination, is non-conforming, provided FlexLink Systems is advised in writing of such non-conformance within thirty (30) days of the date of discovery thereof and said non-conforming products are returned F.O.B. FlexLink Systems' warehouse promptly thereafter, but not later than twelve (12) months from the date of shipment herein under. FlexLink Systems retains the right to render credit for the purchase price in lieu of furnishing a replacement product.

### ***General Limitation of Liability***

TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN OR IN LAW, FLEXLINK SYSTEMS' LIABILITY (IF ANY) TO PAY DAMAGES TO THE CUSTOMER OR ANY THIRD PARTY, ARISING UNDER OR IN CONNECTION WITH THESE TERMS OR THE GOODS OR SERVICES PROVIDED THEREIN, SHALL BE LIMITED TO A MAXIMUM AMOUNT OF 15 PERCENT OF THE PURCHASE PRICE OF THE GOODS OR SERVICES TO WHICH THE DAMAGE PERTAIN. FLEXLINK SYSTEMS' SHALL IN NO EVENT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGE OR LOST PROFITS, LOST OPPORTUNITIES, LOST REVENUES, BUSINESS INTERRUPTION, OBLIGATIONS TO COMPENSATE A THIRD PARTY OR OTHER SIMILAR INDIRECT DAMAGE OF THE CUSTOMER OR A THIRD PARTY ARISING UNDER OR IN CONNECTION WITH THESE TERMS OR THE GOODS OR SERVICES PROVIDED THEREUNDER, WHETHER SUCH CLAIMS BE IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY AND STATEMENT OF CUSTOMER'S EXCLUSIVE REMEDIES ARE REASONABLE.

The calculation of the purchase price has been based on aforementioned limitation of liability. The limitation of liability shall not be applicable if FlexLink Systems has incurred damage to the customer by acting grossly negligent or by willful misconduct.

### ***Export Compliance***

Customer represents and warrants to FlexLink Systems that the customer will not export any goods purchased from FlexLink Systems or otherwise handle or use the goods, except in strict compliance with applicable law, including but not limited to U.S. Export Controls.



## ***Anti-Corruption Compliance***

Customer represents and warrants to FlexLink Systems that the customer will comply with, as applicable, the United States Foreign Corruption Practices Act, Mexico's General Law of Administrative Responsibilities, any other applicable jurisdiction's anti-corruption laws, as well as the Anti-Corruption policies of FlexLink Systems and Coesia, its parent company ("Coesia Policy") and any other applicable anti-corruption or anti-bribery laws and regulations, as amended from time to time.

A copy of Coesia's Policy is available on Coesia's website or upon request. Customer shall promptly report any violations to FlexLink Systems. Breach of this clause shall be deemed to be a material breach of these Terms and any agreement between the parties.

## ***Miscellaneous***

FlexLink Systems or its affiliates may from time to time come to the customer's premises for purposes of installing/servicing products. Except for losses caused directly by the gross negligence or willful misconduct of FlexLink Systems or FlexLink Systems' affiliate while on the premises, FlexLink Systems or FlexLink Systems' affiliate shall not have any liability to the customer or any third parties arising out of their presence or activities on the said premises; and the customer agrees to indemnify and hold harmless FlexLink Systems and FlexLink Systems' affiliates for all such losses or claims.

Customer shall indemnify, defend and hold FlexLink Systems harmless from and against all claims, suits, judgments, costs, losses, expenses (including attorneys' fees) and liabilities arising from or related to infringement (actual or claimed) of patents, copyrights or trademarks arising for compliance with the customer's design, specifications or instructions and the fulfillments of customer's order, as well as from any breach by the customer of the terms of these Terms.

FlexLink Systems is not responsible or liable for damage to or loss or destruction of drawings, samples or other items provided by the customer or prepared by FlexLink Systems at the customer's expense not called for within thirty (30) days after the completion of the order for which they are used.

The remedies herein reserved by FlexLink Systems shall be cumulative and in addition to any other legal remedies. No waiver of a breach of any portion of these Terms or any agreement between the parties shall constitute a waiver of continuing or future breach of such provision or of any other provisions hereof.

These Terms shall be governed and shall be construed according to the domestic laws of the Commonwealth of Pennsylvania, and the parties consent to the exclusive jurisdiction of the courts of Pennsylvania or federal courts therein in any litigation that arises from, or is related to, these Terms. The prevailing party in any action or arbitration arising under these Terms shall be entitled to the costs and expenses of such action, including reasonable attorney fees.

Anything herein to the contrary notwithstanding, any action for alleged breach by FlexLink Systems of the contract between the parties, including but not limited to any action for breach of the warranties herein set forth, shall be barred unless commenced by the customer within one (1) year from the date such cause of action accrued.

These Terms shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns; however, the customer shall not assign its rights or duties hereunder (by operation of law or otherwise) without the prior, written consent of FlexLink Systems.

All notices given by either party under these Terms shall be sent in writing or by facsimile and shall be addressed to the last known address of such other party. Notices shall be deemed to have been received on the fifth business day following deposit in the mail.

If any provision of these Terms or the application thereof to any party or circumstance be held invalid or unenforceable, the remainder of these Terms and the application of such provisions to other parties or circumstances will not be affected thereby and to this end the provisions of these Terms are declared to be severable. No waiver of any of the provisions of these Terms shall be deemed to be or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver





constitute a continuing waiver. No failure of a party hereto to insist upon strict compliance by another party hereto with any obligation, covenant, agreement or condition contained in these Terms shall operate as a waiver of any subsequent or other failure. These Terms may not be modified by any custom or course of dealing between the parties.

The headings contained in these Terms are for the convenience of reference only and shall not constitute a part hereof or define, limit or otherwise affect the meaning of any of the terms or provisions hereof.