1. INTERPRETATION

In these Conditions the following expressions shall have the meanings set out opposite them:

Application Software - means software programs (which may be AWTX Software or Third Party Software) detailed in the Order Acknowledgement which will run on the Products or the Customer Equipment and which enable the Products or the Customer Equipment to perform a particular function.

AWTX Software - means collectively our proprietary Application Software (if any) and Operating Software (if any), or Application Software or Operating Software that is licensed to us for sublicense to Customer, pursuant to the Contract. AWTX Software does not include Third Party Software.

Commissioning - means the checking, calibrating, adjusting and testing of the Products, as detailed in the Order Acknowledgement.

Conditions - means these terms and conditions.

Contract - means the Order Acknowledgement accepting the order for the supply or Installation of the Products as detailed in the Order Acknowledgement constituting the entire contract for the supply or Installation of the Products.

Contract Price - means the amount stated in the Order Acknowledgement as the Contract Price unless this has been expressly varied by agreement with us and recorded in writing.

Customer - means the individual, corporation, partnership, limited liability company, association, or any other entity or organization named in the Order Acknowledgement as the Contract Price.

Customer Equipment - means all machinery, apparatus, materials and articles to be provided by the Customer or the End User on the site, and to be incorporated in conjunction with the Products.

Delivery and Delivery - means unless stipulated to the contrary in the Order Acknowledgement available for delivery, F.O.B. shipping point at such of our sites as we shall specify.

End User - means an individual, corporation, partnership, limited liability company, association, or any other entity or organization which ultimately is authorized to use the Products.

Installation - means the placing and if appropriate fixing in position of the Products, its mechanical connection with the Customer Equipment, and its connection to the electrical power supply as detailed in the Order Acknowledgement.

Installation Package - means the Installation Package (other than F.O.B. shipping point), Installation Commissioning of the Products, and any training or other services provided by us and related thereto.

Order Acknowledgement - means the last document issued (which in the event of any uncertainty shall be determined by reference to the date stated on such document) by us to acknowledge or accept the Customer’s order for the Products or by which we have offered, quoted or tendered to supply the Products. The Order Acknowledgement is issued, and the Products will be supplied, upon these Conditions only.

Products - means the products, apparatus, machinery, materials, spare parts and articles (if any), other than Application Software detailed in the Order Acknowledgement to be provided by us pursuant to the Contract.

Operating Software - means collectively Application Software (if any) and Operating Software (if any).

Specification - means the performance and other functions expected of the Products full details of which are conclusively detailed in or referred to in the Order Acknowledgement.

Standard Warranty - means the limited warranty for each Product, which is provided by us to the Customer at the time of the Order Acknowledgement.

Third Party Items - means any Third Party Products or Third Party Software.

Third Party Products - means any of the products, machinery, apparatus, materials, spare parts and articles (if any) designed and created by third parties without modification or customization which are necessary to the successful operation and performance of the Products or any of the products, machinery, apparatus, materials, spare parts and articles (if any) to be provided pursuant to the Contract that are not manufactured or supplied by us.

Third Party Software - means any Application Software or Operating Software that is designed, developed or provided (but not licensed) to us by third parties, and that we (but do not sublicense to Customer.

We, our and us - means us, the company supplying the Products to the Customer pursuant to the Contract. Our full name and address is Avery Weigh-Tronix, LLC, a Delaware Limited liability company, 1000 Armstrong Drive, Fairmont, Minnesota, 56031 or our successors or assigns.

2. FORMATION OF CONTRACT

2.1 Each Contract shall be deemed to incorporate these Conditions. No variation of or addition to these Conditions shall form part of any Contract.

3. VALIDITY AND ACCEPTANCE

Unless otherwise stated, quotations are valid for the period stated therein, or if no period is stated, for 30 days from the date of issue. Any order placed in compliance with a quotation is subject to acceptance by us and is subject to the Order Acknowledgement.

4. LIMITS OF CONTRACT

4.1 We are only obligated to supply those Products and the Installation Packages which are specified in the Order Acknowledgement.

4.2 Notwithstanding the above we reserve the right, in our sole and absolute discretion, to make minor changes to the Products or the Installation Package, provided that such changes will not affect the Contract Price (or the performance of the Products to conform to the Specification to the extent that one is detailed in the Order Acknowledgement).

4.3 For any Third Party Products, we will not be liable in respect of any loss or damage caused by or resulting from any variation for whatever reason in the manufacturer’s specifications or technical data of the Third Party Products or any part thereof and will not be responsible for any consequential losses, damages or other losses resulting from either a claim for indemnification by us to the manufacturer for alleged breach of warranty, or any other losses or expenses incurred in repeating the tests shall be paid by the Customer.

8. ACCEPTANCE; PERFORMANCE

8.1 The Products and any part thereof shall be deemed to be accepted upon the earliest to occur of any of the following: 14 days after Delivery, upon shipment to an End User, upon completion of the Installation of the Products or where Products have been brought into earlier commercial use. This date shall not be delayed on account of any variations or defects which do not materially affect the use of the Products.

AVERY WEIGH-TRONIX, LLC: CONDITIONS OF SALE – U.S. & EXPORT
10.1 In the event of the Customer returning or failing to accept delivery of the Products or any part thereof in accordance with the Contract, we shall be entitled at our option to:
(a) advise the Customer that the Products are available for delivery and invoice the Customer for the Products or any parts of the Products then remaining undelivered, or,
(b) cancel that delivery, and any further deliveries under the Contract, or,
(c) place in a commercial storage facility or place in our own storage facility or warehouse the Products or any part thereof and take reasonable care of them until payment is made in full.

12. PRICE AND TERMS OF PAYMENT

12.2 Subject to Customer’s establishing and maintaining credit with us in our sole and absolute discretion, we will withhold of use or sales taxes, tariffs, duties or assessments as of 12.3 Where payment of the Contract Price or any part thereof has not been made in accordance with the terms set out in the Order Acknowledgement or these Conditions, then without prejudice to any statutory or common law rights we may have, we reserve the right and the Customer hereby agrees that we may at our option withhold final payment and/or performance of the Contract, and any unpaid payment or damages for which the Customer may become liable for delivery or any of our affiliates against any claims, suits, actions, or any other liability, and our sole discretion.

13. TITLE; SECURITY INTEREST

13.1 Title, possession and risk of loss with respect to the Products shall remain with us until the products have been delivered to and received by the Customer, at which time the Customer will keep any Products supplied by us fully insured for their full replacement value until payment is made in full.

15. SITE FACILITIES

15.1 To enable our obligations under the Contract to be expeditiously performed, the Customer shall provide or agree to provide structures, building, engineering work, suitable guarding and protection for the Products and any part thereof. The Customer is in privity of contract with the sub-licensee, the sub-licensee’s obligations are owed to us and accrue to our benefit, and the Customer shall enforce and shall indemnify us under the terms of the Contract. The term “Customer” as used, disposed of or disclosed to any third party or in connection with any Contract will remain with us or our Licensor and will not vest in the Customer.

14. SOFTWARE AND CONFIDENTIALITY

14.2 The Customer acknowledges that the copyright in the AWTX Software is and remains our or our Licensor’s property and that the AWTX Software consists of information proprietary to us or our Licensor and that any information that is disclosed to us will be licensed to the Customer under our Licensor’s software license, details of which will be supplied with the AWTX Software.

14.5 Where the Customer has reason to believe that any Proprietary Information is a trade secret of ours, including any and all technical or business information, AWTX Software, including its source codes (i.e., all computer programs written in computer programming languages), and all documentation, shall be treated as proprietary information. Customer is in privity of contract with the sub-licensee, the sub-licensee’s obligations are owed to us and accrue to our benefit, and the Customer shall enforce and shall indemnify us under the terms of the Contract. The term “Customer” as used, disposed of or disclosed to any third party Customer shall give us written consent, the Customer may in such circumstances grant non-exclusive, non-sublicensable sub-licenses hereunder upon terms identical to this Section 14 and shall promptly notify us of the terms thereof. For the purposes of this Section 14 and shall promptly notify us of the terms thereof. For the purposes of this Section 14 and shall promptly notify us of the terms thereof.
15.3 In addition the Customer will at its own expense and where necessary:
install, protect and connect all interconnecting cables, and supply all cabling and wiring, where not indicated otherwise, in accordance with instructions, drawings and wiring diagrams supplied by us.

16. INSTALLATION
Installation of Products
16.1 The provisions of Sections 16 and 20 shall only apply if we undertake, in the Order Acknowledgement, to perform the Installation Package.

16.2 Except where the parties otherwise agree, Installation of the Products will take place during our ordinary working hours at any location in the US. We reserve the right to make an extra charge for Installations on out-of-town, remote mainland and all island locations and outside such ordinary working hours.

16.3 Our Installation service will include only those of the following as are indicated in our Order Acknowledgement: delivery (other than F.O.B. shipping point), off loading, skilled supervision of Installation, measurement and marking, testing of unit (if any) or the Contract. We give no warranty for Third Party Items, used Products, thermal print heads or consumable items. A three (3) month war ranty period is given for spare parts and computers (which terms shall include smart cards). Extended guarantees and warranties are available by agreement, as set forth in the Order Acknowledgement.

16.4 The installation of Products in overseas territories will be performed in accordance with the terms of Installation stated in the Order Acknowledgement.

17. WARRANTY – PRODUCTS
17.1 The Company makes no representations or warranties to Customer or to any other party or entity as to the performance of the Products except as expressly set out in the Standard Warranty (if any) or the Contract. We give no warranty for Third Party Items, used Products, thermal print heads or consumable items. A three (3) month warranty period is given for spare parts and computers (which terms shall include smart cards). Extended guarantees and warranties are available by agreement, as set forth in the Order Acknowledgement.

17.2 The provision of spare parts or replacement Products during any warranty period shall not extend the warranty period for the Products into which these are incorporated.

17.3 We may, in our sole and absolute discretion, modify any Standard Warranty without liability to Customer or to any other party or entity upon the earlier to occur of the following: (i) upon a written request of a warranty claim (if any) prior written notice to Customer of the effective date of any such changes; or, (ii) thirty (30) days after the change is posted on our website (and notwithstanding whether such change is posted on a secure or insecure portion of such website); provided, however, that any modification shall not apply, and the previously existing version of any Standard Warranty shall apply, with respect to any event that is covered by the applicable Standard Warranty and that occurs before we provide notice of the modification.

18. WARRANTY - SOFTWARE
18.1 We warrant that for a period of three months from the date of Delivery to the Customer, conceived, created or otherwise made available by us, contains all the information we deem necessary for proper use and operation of the AWTX Software, and
(d) the AWTX Software functions substantially as described in the Specification (if any) attached to the Order Acknowledgement under proper use, care and maintenance.
If the Customer hereto is not satisfied that the AWTX Software to us which we do not accept as failing to comply with the warranty set out in this Section 18, we reserve the right to charge the Customer an inspection fee.

18.2 Our entire liability arising out of the supply of AWTX Software which fails to comply with the warranty set out in Section 18.1 shall be limited to and the Customer’s exclusive remedy shall be, the replacement of AWTX Software recorded upon media provided always that it has been returned to us, shipping prepaid, immediately upon the Customer becoming aware of any defect covered by the warranty set out in Section 18.1.

18.3 Our liability under Sections 18.1 and 18.2 is in lieu of and shall be deemed to exclude all other warranties and conditions whether express or implied, statutory or otherwise, by common law or otherwise. Subject to Sections 18.1 and 18.2, the Software is provided “as is” without warranty of any kind and we shall not be liable for the failure of any of the Software supplied to be fit for any particular purpose for which it is required. Except as provided in this Section 18, we shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in the Software or for any damage or loss (including any loss of data or corruption to Customer’s information) resulting from such defects or from any work done in connection therewith or injury, death or damage to property whereby we have been caused or contributed to by our negligence.

18.4 We do not warrant that the operation of the Software will be uninterrupted or error free.

19. EXCLUSION OF WARRANTIES
19.1 We shall have no liability under Sections 17 or 18 in respect of any Products which has been altered in any way whatsoever or has been subjected to misuse or unauthorized remedial work, has been improperly installed or connected and where such misuse, alteration, remedial work, installation or connection caused or contributed to the defect.

19.2 THE STANDARD WARRANTY AND THE LIMITED WARRANTY PROVIDED IN SECTION 18.1 ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED WARRANTIES, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, PERFORMANCE, SECURITY, NONINFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY US.

20. LIABILITY
20.1 Except as otherwise provided or limited in the Contract, each party ("Indemnifying Party") shall indemnify, hold harmless and defend the other party ("Indemnified Party") against any liability, damages, penalties, fines, judgments, amounts paid in settlement and reasonable costs and expenses (including attorneys’ fees, court costs, accountants’ fees and fees of expert witnesses, which shall be paid as incurred), arising out of or in relation to any Claim, that the Indemnified Party has suffered actual prejudice thereby.

20.3 REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN OR IN ANY STANDARD WARRANTY FAILS IN ITS ESSENTIAL PURPOSE OR OTHERWISE, WE WILL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED BY CUSTOMER, END USERS OR OTHERS ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE PRODUCTS OR SOFTWARE, FOR ALL CAUSES OF ACTION OF ANY KIND (INCLUDING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY) EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR TOTAL CUMULATIVE LIABILITY TO CUSTOMER FOR EACH EVENT, OR SERIES OF RELATED EVENTS, OCCURRING IN EXCESS OF THE AMOUNT PAID BY CUSTOMER TO US DURING THE THREE (3) MONTHS PRIOR TO THE DATE ON WHICH THE EVENT OR SERIES OF RELATED EVENTS OCCURRED.

21. INTELLECTUAL PROPERTY
21.1 We will, at our own expense, defend, indemnify and hold Customer harmless from and against any liability, damages, penalties, fines, judgments, amounts paid in settlement and reasonable costs and expenses (including attorneys’ fees, court costs, accountants’ fees and fees of expert witnesses, which shall be paid as incurred), arising out of or in relation to any Claim, that the Indemnified Party has suffered actual prejudice thereby.

21.2 Customer shall, at its own expense and risk, defend, negotiate or settle the claim. With regard to any Products that are determined by a non-appealable or non-appealed decision of a court of competent jurisdiction to be infringing, or that Customer has been enjoined from marketing or selling by a court of competent jurisdiction, Customer shall (a) obtain for the Customer the right to continue to promote, sell and distribute the Products; or (b) replace or modify the Products in Customer’s inventory so that such Products are no longer infringing or do not require the Customer to continue to promote, sell and distribute such Products; or (c) direct Customer to cease promoting, selling and distributing the Products and provide a credit to Customer for the depreciated value of such Products in Customer’s inventory and accept the return of such Products. The depreciation shall be taken equally over the lifetime of the Products (as determined by us in our sole and absolute discretion). We will have no obligation under this Section to the extent that the alleged infringement arises from any alteration or modification to the Products not authorized by us, or the use or combination of the Products with other products, devices or software that were not supplied or approved by us. THE FOREGOING STATES OUR ENTIRE LIABILITY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT ARISING UNDER THE CONTRACT OR RELATED TO THE PRODUCTS.

22. PACKING
Unless otherwise specified in any Order Acknowledgement, packing in accordance with our standard practice is included in the Contract Price. Except where specified in the Order Acknowledgement, packing cases and packing materials are non-returnable.

23. VENUE/GOVERNING LAW
23.1 Any dispute or difference arising out of or in connection with this Contract or any transaction between us shall be subject to the exclusive jurisdiction of the state courts of the state of Minnesota, and each of the courts of the jurisdiction of such courts. Customer agrees that any and all processes directed to it in any such litigation may be served upon it outside of Minnesota with the same force and effect as if such service had been made within Minnesota. Nothing contained in this Contract shall prevent us from applying to the appropriate court in any part of the world for an injunction or other like remedy to restrain Customer from doing any act or purported act to which we are entitled hereunder or for any reason whatsoever.

AVERY WEIGH-TRONIX, LLC: CONDITIONS OF SALE – U.S. & EXPORT
Issue 4/1/09
Page 3 of 4
accordance with any laws of any governmental authority or jurisdiction outside of the United States.

24. STATUTORY AND OTHER REGULATIONS

If the cost to us of performing our obligations under any Contract shall be increased by reason of the making or amendment, after the date of acceptance of the Customer’s order, of any law or of any order, regulation or judicial decision having the force of law that shall affect the performance of our obligations under the Contract, the amount of such increase shall be added to the Contract Price.

25. EXTRA COST; EXTENSION OF TIME

We shall have the right to extend the Delivery or completion date by a reasonable period and to amend the Contract Price to include any additional costs, including a reasonable element of profit, due to any variation, suspension or delay of the manufacture of the Products, Delivery of the Products or completion of the Installation Package (or any part thereof) resulting from or related to: (i) the information or instructions provided by the Customer (or the lack thereof), or any subsequent changes to, or errors and inconsistencies in, such information or instructions; (ii) any delays arising from the Customer failing suitably to prepare the site to receive the Products, or to provide the Operating Environment for the Products; (iii) any interruptions, overtime, unusual hours, mistakes, or works for which we are not responsible.

26. TERMINATION OF CONTRACT

26.1 If the Customer shall make, default or commit any breach of any of its obligations under this Contract or any Software licenses, or upon dissolution, insolvency, or any adjudication or bankruptcy of, or any assignment for the benefit of the creditors by the other party, or immediately if required by law or by any rule, regulation, order, decree, judgment or other act of any governmental authority, then we shall have the right to terminate the Contract including any Software license by providing Customer notice as provided in these Conditions. The Contract (including any Software license) shall be deemed to have been terminated without prejudice to any claims or rights we might otherwise make or exercise. Termination of the Contract and any of the Customer’s Software licenses shall not affect the validity of valid granted sub-licenses granted to End User.

26.2 Upon termination of this Contract or any part thereof for whatever reason the Customer shall return all copies of the Application Software to us, or, if requested by us, the Customer shall immediately destroy them and certify to us that there has been such destruction.

26.3 The parties acknowledge that the termination of this Contract or any part thereof for whatsoever cause shall not release them from any of their obligations under the Contract arising prior to termination or which expressly or by implication become effective or continue to be effective on or after the termination of the Contract including, without prejudice to the generality of the foregoing, the provisions relating to confidentiality and Proprietary Information set out in Section 14.

27. FORCE MAJEURE

Neither party shall be liable for damages under the Contract for a delay or failure in its performance of any obligation (except the obligation to make payments when due) under the Contract (including the avoidance of doubt obligations arising under these Conditions and the documents referred to in these Conditions) as a result of causes beyond its reasonable control, including war, strikes, lockouts, embargoes, terrorism, insurrection, riots, inability to obtain materials or labor due to governmental acts, rules, regulations or directives, breakdown of machinery, accidents, fires, floods or other natural disasters. Upon the giving of prompt written notice to the other party of any such causes of a delay or failure in its performance of any obligation under the Contract, the time of performance by the party so affected shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause.

28. SET-OFF

The Customer shall not be entitled to withhold payment of any sums after they fall due by reason of any right of set-off or counter claim which the Customer may have or alleged for or any reason whatsoever.

29. GENERAL

29.1 The Contract may not be assigned or transferred by Customer by operations of law, a change of control event (such as a merger, acquisition, reorganization, sale of substantially all its assets or stock or any similar event) or otherwise without our express written consent. Customer may not sub-contract or delegate its obligations hereunder without our express written consent. We shall have the right to assign the Contract, or any part of the rights and obligations created hereunder to any third party in our sole and absolute discretion.

29.2 Any failure by any party to enforce at any time any term or condition under the Contract shall not be considered a waiver of that party’s right thereafter to enforce each and every term and condition of the Contract.

29.3 Except as expressly provided herein, all notices shall be in writing and deemed duly given, if delivered personally or by a recognized overnight courier service, when delivered at the address specified in this Section; by certified or registered first class mail when delivered at the address specified in this Section, on the date of deposit with the United States Postal Service; or by facsimile transmission, when such facsimile transmission is transmitted to the facsimile number specified in this Section, on the date appearing on the return receipt therefor; or by electronic mail when such electronic mail is sent to the electronic mail address specified in this Section, on the date appearing on the return receipt therefor; or by personal delivery at the address designated in the Order Acknowledgement; if to us, to Avery Weigh-Tronix, LLC, 1000 Armstrong Drive, Fairmont, Minnesota, 56031, Attention: President, Fax: 507-238-2373 E-mail: formalnotices@awtxglobal.com.

29.4 If any term, provision, section or clause of the Contract or any application thereof shall be invalid or unenforceable for any reason in any particular jurisdiction, the remainder of the Contract and any other application of such term, provision, section or clause shall not be affected thereby in such jurisdiction (where such remainder or application shall be construed as if such invalid or unenforceable term, provision, section or clause had not been inserted), and the Contract and such application of such term, provision, section or cause shall not, in any manner, be affected thereby in any other jurisdiction. In the event that any term, provision, section or clause of the Contract or any application thereof shall be invalid or unenforceable for any reason in any particular jurisdiction, the parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.

29.5 Each party waives that: (i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to do business under the laws of each jurisdiction which requires such qualification; (ii) it has full right, power and authority to enter into the Contract and perform the acts required of it pursuant to the Contract; and (iii) the execution of the Contract and the performance thereof shall not violate any agreement to which it is a party, or the rights of any third party.

29.6 We may advertise and make known that we are undertaking work for the Customer.

29.7 The words “or” and “nor” are inclusive and include “and”. “Including” means “including without limitation” and does not limit the preceding words or terms. The singular shall include the plural and vice versa. References to “Sections” shall mean the Sections of these Conditions, unless otherwise expressly indicated. The headings or titles preceding the text of the Sections or subsections are inserted solely for convenience of reference, and shall not constitute a part of the Contract, nor shall they affect the meaning, construction or effect of the Contract.

29.8 The Customer warrants and undertakes that during the term of the Contract and for a period of nine (9) months following the completion of the Contract, it will not without our prior written agreement, employ or offer to employ or to introduce to any third party any person employed by us at the time of the making of this Contract and not directly or indirectly to induce any such person to leave our employment as aforesaid.

29.9 The provisions of Incoterms 2000 shall apply to these Conditions except where they are inconsistent with these Conditions.

29.10 The Customer shall not at any time during the continuance of this Contract or for a period of five years thereafter make any public statements regarding us which could in any manner bring us or our services or products into disrepute.

29.11 Nothing in the Contract is intended, or shall be construed, to give anyone (including End Users and any sub-distributors other than the parties hereto and their affiliates any legal or equitable right, remedy or claim under or in respect to the Contract or any of the provisions contained therein.

29.12 The provision of the Contract (including these Conditions) that, by their express terms will not be fully performed prior to the termination of the Contract, including Sections 4.3, 4.4, 8.2, 8.3, 8.4, 9, 10, 11, 12, 13, 14.2, 14.3, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of these Conditions, shall survive the termination of the Contract.