

# Zonatherm Products, Inc.

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<b>COMPANY:</b>	FERMI NATIONAL ACCELERATOR LABORATORY	<b>PROPOSAL #:</b>	Q00713895
<b>ATTN:</b>	Dave Richey	<b>PAGES:</b>	6
<b>FAX:</b>		<b>DATE:</b>	Mar 4, 2005
<b>FROM:</b>	Michael Bordenet		
<b>PROJECT:</b>	FERMI-SHUTDOWN		

We are pleased to provide our quotation for the following Liebert System:

## Open Wire Solution

- **One (1) MLADV**, MultiLink 3.5 Advanced Shutdown and MultiLink 1.5 Shutdown software on CDROM. Software application designed to monitor battery status of Liebert UPS powering the computer system on which it is installed. Provides graceful, unattended shutdown of computer operating system in the event of extended utility power failures.
- **One (1) MLLKB**, MultiLink™ network shutdown license, 5 computers on CDROM. Allows you to efficiently manage power protection on a UPS by running MultiLink™ on one computer and using that computer to notify other computers throughout the network of UPS conditions.
- **One (1) IRACKMLADPT**, adapter hood kit to build custom length MultiLink cable for On-Battery and Low-Battery monitoring of the UPS. Requires an customer supplied straight through RJ45 cable.

**Total Price NOT Including Freight OR TAX**

**\$ 500.00**

## SNMP Solution

- **One (1) MLADV**, MultiLink 3.5 Advanced Shutdown and MultiLink 1.5 Shutdown software on CDROM. Software application designed to monitor battery status of Liebert UPS powering the computer system on which it is installed. Provides graceful, unattended shutdown of computer operating system in the event of extended utility power failures.
- **One (1) MLLKB**, MultiLink™ network shutdown license, 5 computers on CDROM. Allows you to efficiently manage power protection on a UPS by running MultiLink™ on one computer and using that computer to notify other computers throughout the network of UPS conditions.
- **One (1) SNMP kit for UPS**, includes installation by Liebert Global Services

**Total Price NOT Including Freight OR TAX**

**\$4,150.00**

**Terms & Conditions:**

- Quotation Valid for 30 days
- Price does not include tax
- Terms are Net 30 Days, subject to manufacturer's approval
- Liebert standard Terms & Conditions apply (see attached)

**- Please address Purchase Orders to:**

**Liebert Corporation c/o Zonatherm Products, Inc.  
251 Holbrook Drive  
Wheeling, IL 60090**

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Michael Bordenet

## Seller Terms and Conditions of Sale

Liebert Corporation is herein referred to as "Seller". The person or entity purchasing goods ("Goods") and/or licensing software or firmware, which is preloaded or to be loaded into Goods ("Software"), is herein referred to as "Buyer."

1. **ORDER ACCEPTANCE:** No order issued by Buyer to Seller shall be binding on Seller unless Seller manifests its acceptance of such order either in writing or by commencement of performance hereunder. Seller reserves the right, at its sole discretion, to refuse orders. Seller's acceptance of Buyer's order shall constitute a binding agreement between Buyer and Seller and is expressly conditioned on Buyer consent to the terms and conditions set forth herein as being the complete and exclusive statement of terms governing the sale/license of Goods and Software. Changes or additions stated by Buyer in its order or otherwise are specifically rejected by Seller and shall be binding upon Seller only if expressly agreed to in writing signed by Seller. Buyer acceptance of the Goods and/or Software will further manifest Buyer's consent to Seller Terms and Conditions of Sale.

2. **ITEMS PURCHASED:** Goods and/or Software purchased and to be provided hereunder, unless otherwise agreed in writing by Seller, will be Seller's standard Goods and/or Software as specified in Seller's quotation or acknowledgment. Goods provided to Buyer may include Software incorporated in or provided separately for use with the Goods. Software title is reserved in Seller and Seller grants Buyer a non-exclusive, royalty free license solely for Buyer's use of the Software with the Goods provided.

3. **TOOLING:** Tool, die and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies and patterns do not convey to Buyer, title, ownership interests in, or rights to possession or removal, nor prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing.

4. **INSPECTION/TESTING/ACCEPTANCE:** Buyer, at its expense, may observe the inspection and testing of the Goods upon agreement with Seller. All inspection and testing shall be in accordance with seller's specifications and standards and shall be conducted at Seller's plant before shipment of the Goods. Any claim of non-conforming Goods must be made promptly before shipment. If Buyer does not inspect the Goods at Seller's plant as provided herein, Buyer shall have ten (10) days from the date of delivery to verify receipt of conforming Goods and Software. Buyer must give written notice to Seller within ten (10) days of delivery of the Goods and Software stating why the Goods and Software are not conforming or such basis for rejection shall be deemed waived and Buyer shall be deemed to have unqualifiedly accepted the Goods.

5. **RETURNED GOODS:** Except as may be otherwise provided with respect to warranty returns, advance written permission to return rejected Goods must be obtained from Seller. Such Goods must be new, unused, of current manufacture and free of all liens or other claims. Goods must be shipped freight prepaid to Seller. Goods returned without the prior written permission of Seller will not be accepted by Seller. Seller reserves the right to inspect Goods prior to authorizing their return. Upon receipt of the returned Goods, Seller will issue credit to Buyer in an amount equal to the billing price or current price of the Goods, whichever is lower, from which will be deducted an inspection and repacking charge and the cost of any reconditioning.

6. **SHIPMENT/DELIVERY:** Buyer acknowledges that Seller's shipping dates are estimates and are subject to change by Seller upon written notice to Buyer. Unless otherwise agreed to in writing by Seller, delivery terms shall be F.O.B. Seller's shipping point. Seller reserves the right to make partial shipments. Risk of loss or damage and responsibility to insure shall pass from Seller to Buyer upon delivery to a carrier for shipment to Buyer. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages and/or damages must be acknowledged and signed for at the time of delivery. If Goods are held by Seller for Buyer at Buyer's request, or due to Buyer's failure to supply shipping instructions, Seller may invoice Buyer for the full purchase price of the Goods and Buyer agrees to make payment. Goods held for Buyer by Seller, for whatever reason, are held at Buyer's risk and Buyer shall reimburse Seller for any insurance, storage or other costs incurred by Seller.

7. **PRICES:** Unless otherwise agreed in writing by Seller, prices for Goods are F.O.B. Seller's shipping point with no discount. Prices quoted by Seller shall remain in effect for the period stated in Seller's quotation or acknowledgment, or, if none stated, thirty (30) days after the date of same. If Seller does not receive, within such time period, an unconditional authorization from Buyer to ship Goods, Seller shall have the option to change the price for such Goods to that prevailing at the time of shipment. Prices and license fees do not include installation, freight, handling, hoisting, rigging, insurance or storage charges, unless otherwise agreed by Seller in writing. Prices and license fees also do not include taxes or duties imposed on the manufacture, sale, delivery or use of the Goods; such assessments are for Buyer's account and Seller will add such assessments to the price stated absent Seller receipt of Buyer's proper exemption certificate.

8. **PAYMENT/SECURITY INTEREST:** Payment is due in U.S. currency net thirty (30) days from date of Seller invoice, time being of the essence. Any payment not made when due shall be subject to an interest charge at the maximum rate permitted by Statute. Partial shipments of Goods will be invoiced and are payable as they occur in accordance with these terms. Buyer hereby grants Seller a security interest in the Goods, Software, and products, additions, replacement, proceeds and receivables therefrom and agrees to execute a financing statement confirming such interest upon Seller request. Seller may preserve its interests in payment by enforcing any applicable mechanic's, construction or similar lien rights, or demanding different terms of payment including, but not limited to, advance cash payment, whenever it appears to Seller that circumstances require such measures. Buyer agrees to take all measures necessary to comply with any new payment terms imposed by Seller. If Buyer fails to comply with payment terms, Seller may elect to terminate this Agreement or suspend performance under this or other agreements with Buyer and: (a) with or without legal process and using such force as may be lawful and necessary, enter into or upon the premises where the Goods are located and take possession of them (b) cancel all warranties herein and (c) pursue any additional remedies provided by law. Buyer shall be liable to Seller for all expenses, including reasonable attorney's fees, relating to the collection of past due amounts.

9. **DELAYS:** Seller shall not be liable or responsible for cost, expense or damage due to non-performance or a delay in performance where such non-performance or delay is due to causes beyond its reasonable control, including, but not limited to: natural disasters, acts of government, power failure, fire, flood, acts of God, labor disputes, riots, acts of war, epidemics, or material and transportation shortages. Deliveries of Goods and/or Software or other Seller performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer of the foregoing, but other Buyer and Seller performance hereunder shall otherwise remain unaffected.

If Seller determines that its ability to supply the total demand of Goods or to obtain material used in the manufacture of Goods is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of Goods or material among its buyers on such basis as Seller determines to be equitable without liability to Buyer for any failure of performance which may result therefrom.

10. **LIMITED WARRANTY:** Seller's standard warranty applicable to the Goods purchased provided to Buyer at the time of purchase of Goods, is the only warranty applicable to the sale of Seller's Goods and its terms, conditions and limitations are incorporated by reference herein. Seller's warranty may be modified only by a writing signed by a duly authorized officer of Seller. Buyer assumes all other responsibility for any loss, damage or injury to persons or property arising out of, connected with, or resulting from the installation or use of Goods, either alone or in combination with other goods whether supplied by Seller or otherwise. Buyer acknowledges that any technical advice furnished by Seller with respect to the use of the Goods is given without charge and Seller assumes no obligation or liability to Buyer for the advice given or results obtained; all such advice is given by Seller and accepted by Buyer at Buyer's risk.

**SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE.**

**SELLER'S WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT THE PURPOSE OR USE OF THE GOODS HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS, OR OTHERWISE AND WHETHER OR NOT THE GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

SAFM-8540-13

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Seller's warranty obligations are conditioned upon timely receipt of all payments in accordance with the payment terms specified herein. During the period any amounts are overdue from Buyer, Seller shall have no obligations under this warranty. The warranty expiration date shall not be extended upon payment of the overdue amount. To the extent that Seller has relied upon any Buyer specifications, information, representations, or other data in the selection or design of Goods for Buyer, or the preparation of Seller's quotation, and conditions arise that are at variance with Buyer's representations, Seller's warranty and other provisions herein which are affected by such conditions shall be null and void.

11. **PATENTS AND COPYRIGHTS:** Seller warrants that any Goods provided hereunder do not infringe upon any valid U.S. patent or copyright in existence on the date of shipment. Seller will defend at its expense any action brought against Buyer to the extent it is based on a claim the Goods supplied by Seller infringe a valid United States patent or copyright. Seller will pay those costs and damages finally awarded against Buyer in any such claim, but such defense and payments are conditioned upon the following:

(a) Seller shall be notified promptly in writing by Buyer of any notice of such claim; and (b) Seller shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; and (c) should the Goods or the operation thereof become or, in Seller's opinion be likely to become, the subject of a claim of infringement of a valid United States patent or copyright, Buyer shall permit Seller, at Seller's option and expense to: (i) procure for Buyer the right to continue using the Goods, (ii) replace or modify the Goods so they become non-infringing, or (iii) grant Buyer a credit for such Goods, as depreciated, and accept return of same. Depreciation shall be calculated by Seller as an equal amount per year over the life of the Goods. (iv) cancel future deliveries of Goods without liability to Buyer.

Seller shall have no liability to Buyer with respect to any claim of patent and/or copyright infringement based upon: (a) Combination or utilization of Goods or Software furnished under this Agreement with equipment, devices, or Software not manufactured by Seller; or (b) the modification by Buyer of Goods or Software furnished under this Agreement; or (c) Seller compliance with Buyer's design specifications.

The foregoing states the entire liability of Seller with respect to infringement of patents or copyrights.

12. **LIMITATION OF LIABILITY/CONSEQUENTIAL DAMAGES:** IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR (A) DAMAGES IN EXCESS OF THE PURCHASE PRICE PAID FOR THE GOODS OR (B) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR ECONOMIC CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER INCLUDING WITHOUT LIMITATION, LOSS OF USE, DATA, PROFIT, OR REVENUE, OR LOSS OR DAMAGE TO PROPERTY OR EQUIPMENT, OR OTHER ECONOMIC LOSS INCURRED BY BUYER AS A RESULT OF SELLER'S PERFORMANCE OR CANCELLATION OF THIS AGREEMENT, WHETHER ANY CLAIM IS BASED UPON THEORIES OF INFRINGEMENT, WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE, EVEN IF SELLER HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. **LIMITATION OF REMEDY:** SECTION 10 (WARRANTY), SECTION 11 (PATENTS AND COPYRIGHTS) AND SECTION 12 (LIMITATION OF LIABILITY/CONSEQUENTIAL DAMAGES) PROVIDE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTIES.

14. **CHANGES:** Seller reserves the right to make any changes in the model and design of its Goods and/or Software without obligation to similarly alter Goods and/or Software previously sold. Buyer may, in writing, within the scope of the accepted order, request changes in the established specifications or delivery schedules. If Seller agrees to such changes and these changes alter the amount due under the purchase order or the time required for performance hereunder, the price of Goods ordered, any license fees and/or the time for performance shall be equitably adjusted.

15. **CANCELLATION:** This Agreement or any part of it is subject to cancellation by Seller if the conditions specified herein are not met by Buyer or if Buyer becomes insolvent or bankrupt. In the event of cancellation for this reason Seller is under no obligation to pay Buyer for any expenses, costs, claims, or liabilities incurred and Seller may retain any portion of the purchase price pre-paid by Buyer as liquidated damages. Seller retains all rights to any other legal remedies it may have against Buyer. Buyer may cancel orders herein only upon reasonable advance written notice to Seller and upon payment to Seller of Seller's cancellation charges, which include all costs and expenses incurred by Seller in the course of performance herein and amounts adequate to cover any commitments made by Seller and Seller's anticipated profit on the sale of the Goods.

16. **DRAWINGS/DOCUMENTATION:** Seller's prints or drawings (and the technology depicted) which are furnished to Buyer in connection with this Agreement are the property of Seller and Seller retains all patent, copyright and other rights, including, without limitation, exclusive rights of use, license, or sale. Buyer's possession of such prints or drawings does not grant Buyer any rights or license, express or implied therein and Buyer shall, upon Seller request, return immediately all copies of such prints or drawings to Seller.

17. **EXPORT:** Each party hereby agrees to comply with all export laws and restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority and not to export or allow the export or re-export of any Goods to be supplied hereunder in violation of any such restrictions, laws or regulations, or without all required licenses and authorizations. Buyer acknowledges that Seller's quote on Goods ordered hereunder is subject to Buyer obtaining any required license or authorization at time of shipment and Buyer agrees that Seller shall incur no liability to Buyer if such license or authorization is unavailable.

18. **NUCLEAR/MEDICAL AND DENTAL:** GOODS SOLD HEREUNDER ARE NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS. GOODS SOLD HEREUNDER ARE ALSO NOT FOR USE IN ANY LIFE SUPPORT, PATIENT-CONNECTED, OR APPLIED MEDICAL AND DENTAL APPLICATIONS. Buyer accepts Goods with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or user and to defend, indemnify, and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

19. **APPLICABLE LAW/VENUE:** This Agreement shall be governed by and performance construed in accordance with the domestic laws and Uniform Commercial Code as adopted in the State of Ohio, without reference to its choice or conflict of laws principles. The parties agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. For non-domestic sales, the parties mutually agree that the rights and obligations of the parties herein shall be determined without reference to the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods, as amended.

20. **SEVERABILITY:** If any section or part of this Agreement is or becomes illegal, unenforceable or invalid then the aforementioned part or section shall be struck from this Agreement and shall not affect the remaining parts or sections except to the extent necessary to prevent a clearly inequitable result.

21. **ASSIGNMENT/DELEGATION:** Buyer shall not assign any rights or delegate any duties hereunder without the prior written permission of Seller. Any assignment or delegation without such permission shall be void.

22. **MODIFICATIONS/WAIVER:** No proposed conditions, usage of trade, course of dealing or performance, or agreement asserted or purported to modify, change, waive, or supplement this Agreement's provisions or the Seller's quotes, acknowledgements, or documents referenced herein shall be applicable to this Agreement unless in writing and signed by a duly authorized associate of Seller. No other Seller associate or representative is authorized to alter the terms of this Agreement.

23. **FINAL AND COMPLETE AGREEMENT:** These terms and conditions, any software licensing agreement and other documents referenced herein, and any Seller quotation or acknowledgment and documents specifically referenced therein, represent the final and complete Agreement between the parties with respect to the sale of Goods and/or license of Software and supersede all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject matter.

## **LIMITED WARRANTY**

This Warranty is given **ONLY** to purchasers who buy for commercial or industrial use in the ordinary course of each purchaser's business.

### **General:**

Liebert Corporation ("Liebert") manufactures, in our opinion, the finest products and systems available. We take pride in our products and are pleased that you have chosen them. Under certain circumstances we offer with our products the following Two-Year Warranty Against Defects in Material and Workmanship.

Please read your Warranty carefully. This Warranty sets forth our responsibilities in the unlikely event of defect and tells you how to obtain performance under this Warranty.

## **TWO YEAR LIMITED WARRANTY AGAINST DEFECTS IN MATERIAL AND WORKMANSHIP**

### **LIEBERT PRODUCTS COVERED:**

The covered products are: PowerSure® Surge II, PowerSure® PST, PowerSure® PSA, PowerSure® PSP, PowerSure® PSI, UPStation® GXT (mini tower models), UPStation® GXT 2U (up to and including 3 kVA models), GXT2-6000RT208, and MicroPOD 2U.

### **Terms of Warranty:**

The Liebert product is warranted to be free of defects in material and workmanship for a period of two (2) years from date of product purchase, but in no case to exceed twenty-seven months (27) from date of shipment of the product by Liebert. If any part or portion of the Liebert product fails to conform to the Warranty within the Warranty period, Liebert, at its option, will furnish new or factory remanufactured products or parts for repair or replacement.

Additionally, if the Liebert product should fail to operate upon initial start-up or should cease to operate within ten (10) days of start-up, Liebert will provide User a new replacement product, subject to the limitations below, but at no cost to User for Liebert labor or transportation charges arising from the replacement of the product, if Liebert determines the failure of the product was due to a defect in material or workmanship.

### **Warranty Extends to First Purchaser for Use, Non-transferable:**

This Warranty is extended to the first person, firm, association or corporation for whom the Liebert product specified herein is originally installed for use (the "User") in the fifty United States or Canada. This Warranty is not transferable or assignable without the prior written permission of Liebert.

### **Assignment of Warranties:**

Liebert assigns to User any warranties which are made by manufacturers and suppliers of components of, or accessories for, the Liebert product and which are assignable, but Liebert makes NO REPRESENTATIONS as to the effectiveness or extent of such warranties, assumes NO RESPONSIBILITY for any matters which may be warranted by such manufacturers or suppliers and extends no coverage under this Warranty to such components or accessories.

### **Drawings, Descriptions:**

Liebert warrants for the period and on the terms of the Warranty set forth herein that the Liebert product will conform to the descriptions contained in applicable certified drawings, if any, Liebert's final invoices, and to applicable Liebert product brochures and manuals current as of the date of product shipment ("Descriptions"). Liebert does not control the installation and use of any Liebert product. Accordingly, it is understood that the Descriptions are NOT WARRANTIES OF PERFORMANCE and NOT WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

### **Warranty Claims Procedure:**

Within a reasonable time, but in no case to exceed thirty (30) days, after User's discovery of a defect, User shall contact Liebert at (800) 222-5877 and request a return authorization number. User shall ship the defective product to Liebert. Liebert products shipped to Liebert without a return authorization number will be refused and returned freight collect to User at User's expense. Products shipped by User to Liebert which have incurred freight damage due to User's improper packaging of the product will not be covered by this Warranty and any repairs or replacement parts, components or products needed will be invoiced in the full current price amount and returned freight collect to User.

Subject to the limitations specified herein, Liebert will repair or replace, at its option, without charge for materials, subsequent to its inspection and F.O.B. Liebert's facility, the product shipped to Liebert that does not conform to this Warranty. Replacement products shipped to User prior to User's shipment of the claimed defective product to Liebert shall be invoiced in the full current price amount should User fail to return the claimed defective product to Liebert within thirty days of receipt of the replacement product. Warranty coverage will be extended only after Liebert's inspection discloses the claimed defect and shows no signs of treatment or use that would void the coverage of this Warranty. All defective products and component parts replaced under this warranty become the property of Liebert.

### **Warranty Performance of Component Manufacturers:**

It is Liebert's practice, consistent with its desire to remedy Warranty defects in the most prompt and effective manner possible, to cooperate with and utilize the services of component manufacturers and their authorized representatives in the performance of work to correct defects in the product components. Accordingly, Liebert may utilize third parties in the performance of Warranty work, including repair or replacement hereunder, where, in Liebert's opinion, such work can be performed in less time, with less expense or in closer proximity to the Liebert product.

### **Items Not Covered By Warranty:**

THIS WARRANTY DOES NOT COVER DAMAGE OR DEFECT CAUSED BY misuse, failure to recharge batteries, improper application, wrong or inadequate electrical current or connection, negligence, inappropriate on-site operating conditions, corrosive atmosphere, repair by non-Liebert designated personnel, accident in transit, tampering, alterations, exposure to the elements, Acts of God, theft, installation contrary to Liebert's recommendations, or in any event if the Liebert serial number has been altered, defaced, or removed.

Warranty is void if the battery is allowed to discharge below the minimum battery voltage cutoff point.  
TO PREVENT SUCH DISCHARGE -  
DO NOT leave the unit POWER switch ON for more than 2 days without AC power being supplied to the UPS.  
The battery must be recharged every 6 months if not in use.

THIS WARRANTY DOES NOT COVER installation costs, fuse replacement, circuit breaker resetting or maintenance or service items and further, except as may be provided herein, does NOT include labor costs or any part thereof or charges to remove or reinstall the same at any premises of User.

THE PRODUCTS LISTED IN THIS WARRANTY ARE NOT DESIGNED FOR USE IN THE FOLLOWING APPLICATIONS: (i) ANY NUCLEAR OR RELATED APPLICATIONS; AND (ii) LIFE SUPPORT AND PATIENT-CONNECTED AND APPLIED MEDICAL AND DENTAL APPLICATIONS.

REPAIR OR REPLACEMENT OF A DEFECTIVE PRODUCT OR PART THEREOF DOES NOT EXTEND THE ORIGINAL WARRANTY PERIOD.

**Limitations:**

. THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

. USER'S SOLE AND EXCLUSIVE REMEDY IS REPAIR OR REPLACEMENT OF THE LIEBERT PRODUCT AS SET FORTH HEREIN.

. IF USER'S REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE BY A COURT OF COMPETENT JURISDICTION, LIEBERT'S RESPONSIBILITY FOR PROPERTY LOSS OR DAMAGE SHALL NOT EXCEED THE NET PRODUCT PURCHASE PRICE

. IN NO EVENT SHALL LIEBERT ASSUME ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS INTERRUPTION OR LOSS OF DATA, WHETHER ANY CLAIM IS BASED UPON THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR OTHERWISE.

**Miscellaneous:**

. NO SALESPERSON, EMPLOYEE OR AGENT OF LIEBERT IS AUTHORIZED TO ADD TO OR VARY THE TERMS OF THIS WARRANTY. Warranty terms may be modified, if at all, only by a writing signed by a Liebert Officer.

. Liebert obligations under this warranty are conditioned upon Liebert timely receipt of full payment of the product purchase price and any other amounts due. Liebert reserves the right to supplement or change the terms of this Warranty in any subsequent warranty offering to User or others.

. In the event that any provision of this Warranty should be or becomes invalid and/or unenforceable during the warranty period, the remaining terms and provisions shall continue in full force and effect.

. This Warranty shall be governed by, and construed under, the laws of the State of Ohio, without reference to the conflict of laws principles thereof.

. This Warranty represents the entire agreement between Liebert and User with respect to the subject matter herein and supersedes all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject.

