

COUNTERPATH CORPORATION
INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

All capitalized terms not defined in this document shall have the meaning ascribed to them in the NACR Sales Agreement.

Infringement Indemnity. NACR, at NACR's expense, will defend, indemnify, and hold harmless Customer and Customer's owners, officers, directors, and employees (individually and collectively, an "Indemnified Party") from any third party claim, action, suit, or proceeding against an Indemnified Party (a "Claim") to the extent that such Claim is based upon an allegation that a Product infringes any right of any third party. NACR will indemnify an Indemnified Party for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from a Claim. NACR's obligations under this Section are conditioned upon the following: (i) upon becoming aware of the Claim, an Indemnified Party provides to NACR prompt written notice of the Claim; (ii) an Indemnified Party gives to NACR sole authority and control of the defense and/or settlement of the Claim; provided, however, that NACR shall not enter into any settlement that binds Customer in any way without the consent of Customer, which consent shall not be unreasonably withheld, delayed, and/or conditioned; and (iii) an Indemnified Party, at NACR's expense, provides all reasonable information and assistance requested by NACR to handle the defense and/or settlement of the Claim. An Indemnified Party, at its expense, may hire legal counsel of its choice to participate in an advisory capacity in discussions, negotiations, or proceedings of the Claim.

Remedial Measures. If a Product becomes the subject of a Claim, or if NACR reasonably believes that use of such Product may become the subject of a Claim, then NACR shall do, at its own expense and option, at least one (1) of the following: (i) procure for Customer the right to continue use of the Product at no additional cost to Customer for such right; (ii) replace the Product with a non-infringing product while maintaining the Product's essential specifications; (iii) modify the Product so that it becomes non-infringing while maintaining the Product's essential specifications; or (iv) refund to Customer a pro-rated portion of the applicable purchase price and license fees paid to NACR for the Product (and, where applicable, the fees paid to NACR for Services), based upon a linear monthly depreciation over a five (5)-year useful life, in which case Customer will both cease all use of the Product and return the Product to NACR. NACR agrees to consider the preceding remedial measures in the order that they are presented above and will select (iv) only with consent of Customer.

Exceptions. NACR will have no defense or indemnity obligation for any Claim to the extent that the Claim is based upon (i) a Product that has been modified by someone other than NACR (or a subcontractor of NACR), if such modification results in the allegation of the infringement; (ii) a Product that has been modified in accordance with either Customer-provided specifications or instructions, if such modification results in the allegation of the infringement; (iii) use or combination of a Product with Third Party

Products, if such use or combination results in the allegation of the infringement; or (iv) End User products or Third Party Products. The term “Third Party Products” means any products manufactured by or provided by a party other than NACR, and may include, without limitation, products ordered by Customer from third parties pursuant to NACR’s recommendations. However, Third Party Products do not include components of Products that both (a) are not recognizable as standalone items; and (b) are not identified as separate items on NACR’s price list, quotes, orders, or documentation.