



## AMEREQUIP CORPORATION

### Terms and Conditions Regarding Purchase of Goods and Services

#### 1. Applicability.

1.1 These Terms and Conditions of Purchase (the "Terms") of Amerequip Corporation ("Buyer") shall apply the purchase of any goods, materials, services or work product ("Goods") by Buyer from the seller thereof ("Seller") pursuant to any purchase order issued by Buyer (an "Order") and acknowledged by Seller. Except to the extent expressly otherwise agreed in writing signed by an authorized officer of Buyer, these Terms and the applicable Order (together, this "Agreement") constitute the entire agreement between Buyer and Seller regarding the Goods, and any additional or contrary terms or conditions proposed by Seller (including, without limitation, by incorporation or reference in any proposal, quotation, acknowledgement or invoice issued by Seller) are hereby expressly rejected and shall be of no force or effect, regardless of Buyer's acceptance of such proposal, quotation, acknowledgement, invoice or Goods.

#### 2. Seller's Acceptance.

2.1 Seller's response to any request for proposal, request for quote or Order issued by Buyer, Seller's issuance of any proposal, quotation or invoice to Buyer, or Seller's performance of this Agreement, shall be deemed Seller's unconditional ascent to this Agreement and acceptance of the Order and these Terms. Seller shall acknowledge all Orders within forty-eight (48) hours of the date of

such Order, and Buyer shall have the option to revoke or rescind any Order not timely acknowledged by notice to Seller. Any deviation from, modification of or supplement to an Order shall only be effective if explicitly and separately identified by Seller as a deviation, modification or supplement and expressly approved in writing signed by an authorized officer of Buyer.

#### 3. Specifications.

3.1 Seller shall provide the Goods in strict compliance with all specifications, characteristics, designs, drawings, dimensions, measurements, standards, methods and processes (collectively, "Specifications"): (a) set forth in the applicable Order and any related request for proposal or request for a quote; (b) incorporated by Seller into any proposal, quotation, acknowledgment or acceptance relating to the order; (c) attendant to any sample or prototype provided or accepted by Buyer; and (d) all laws, statutes, regulations, rules and orders of any federal, state or local government, court, governmental agency or governmental authority ("Laws") applicable to the Seller or the sale, purchase, export, import, transport, use or other disposition of the Goods. Seller shall not modify or alter the Specifications, except as expressly authorized in writing signed by an authorized officer of Buyer.

3.2 Upon receipt of an Order, Seller is responsible to review and fully understand the Specifications, and shall promptly bring any inquiry, defect, deficiency, incompatibility or inconsistency relating thereto to the attention of Buyer for clarification. Any such clarification shall be deemed incorporated into the Specifications. In no event shall Buyer's provision or approval of the Specifications limit, eliminate or operate as a waiver of any of Seller's representations or warranties under this Agreement.

#### 4. Safety

4.1 Seller shall comply with any and all instructions, security procedures and authentications designated from time to time by Buyer.

4.2 Seller shall at all times maintain the following policies of insurance coverage, issued by insurers reasonably satisfactory to Buyer: (a) worker's compensation in accordance with minimum standards provided by Law; (b) commercial general liability with limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate; (c) products liability with limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate; (d) completed operations and contractual liability; (e) all risks property; and (f) automobile liability.

At any time upon request of Buyer, Seller shall furnish certificates of insurance to Buyer evidencing the coverage required pursuant to this Section, naming Buyer as an additional insured and providing that such policies of insurance may not be cancelled, terminated or not renewed upon not less than thirty (30) days' advance notice to Buyer. Seller hereby irrevocably waives, and shall cause its insurers to waive, any right of subrogation against Buyer. In no event shall Seller's liability to Buyer be limited to the amount of available insurance.

4.3 Seller, its contractors and carriers, and its and their Representatives who access any premises of Buyer for any reason do so at their own risk, and shall comply with all applicable rules, regulations, procedures and instructions of Buyer and its representatives relating to safety, security and confidentiality. Seller shall be solely responsible for the conduct of its contractors and carriers, and its and their Representatives, and in no event shall the provisions of this Section establish any employer-employee or principal-agent relationship between Buyer and such parties, nor does it confer upon Buyer any responsibility regarding the services to be performed by Seller.

#### 5. Quality Assurance.

5.1 Seller shall implement at all times compliance with the current quality control systems and procedures provided by Buyer, as the same maybe updated, amended or superseded from time to time by Buyer, in addition to any other quality control systems and procedures

mutually agreed in writing by the parties. Seller shall also comply with those quality control systems and procedures which Seller represents in any promotional material, quote or acknowledgement as being undertaken by Seller, to the extent such quality control systems and procedures are not inconsistent with those proscribed or provided by Buyer. In no event shall Seller's compliance with the quality control systems and procedures limit, eliminate or operate as a waiver of any of Seller's representations or warranties under this Agreement.

5.2 Seller shall, upon not less than forty-eight (48) hours' advance notice from Buyer, make Seller's facilities, processes, personnel and records available for inspection and review by Buyer or its designated Representatives (as defined below). Seller shall cooperate with Buyer in good faith to promptly resolve any unsatisfactory condition or non-compliance with this Agreement identified by Buyer to Buyer's reasonable satisfaction. At any time upon request by Buyer, Seller shall promptly certify to its compliance with this Agreement in writing signed by an authorized officer of Seller.

#### 6. Schedule.

6.1 Seller must make delivery of the Goods ("Delivery") strictly in accordance with the schedule set forth in the Order or otherwise agreed upon in writing (the "Delivery Schedule"). Seller shall promptly notify Buyer in writing if a delay in meeting Delivery Schedule becomes reasonably foreseeable by Seller, explaining the reasons for, and specifying the anticipated duration of, such delay. In the event of any actual or anticipated delay in Delivery, Seller shall cooperate with the reasonable instructions of Buyer and use its best efforts to expedite production, packaging, transportation and Delivery so as to minimize or eliminate such delay at the sole cost and expense of Seller.

6.2 Seller shall make all Deliveries in the quantities set forth on the Order. Seller shall not make Delivery in advance, in installments, or in excess or deficient quantities, except in accordance with written consent signed by an authorized officer or Buyer. Buyer may reject any Delivery of Goods made in advance, in installments, or in excess or deficient quantities, or may accept, store and maintain such Deliveries, in each case at Seller's sole

cost and expense. Upon written notice from Buyer, Seller shall cease procurement, production, packaging, shipment and Delivery of the Goods for the period specified by Buyer, and Seller shall use its best efforts to mitigate costs and losses

2 associated therewith. Seller shall not anticipate any Order or Delivery, and shall not produce any Goods or procure any materials except pursuant to an Order. In no event shall Seller invoice Buyer for any Delivery in advance of the Delivery Schedule.

6.3 If any Delivery is not made in full in accordance with the Delivery Schedule applicable to an Order subject to this Agreement, Buyer may, in its sole discretion and in addition to (and not in lieu of) all other remedies at law or in equity available to Buyer in the event of Seller's breach of this Agreement: (a) impose on Seller the negative consequences of Buyer's "Supplier Scorecard Program" which is incorporated herein by this reference (and Seller hereby acknowledges actual receipt of the Buyer's Supplier Scorecard Program, and the applicable provisions thereof); and/or (b) cancel the Order in whole or in part without any further obligation or liability to Seller. Buyer's rights pursuant to this Section shall be in addition to, and not in lieu of, all other rights and remedies available to Buyer pursuant to this Agreement, by statute, in equity or at Law (including, without limitation, monetary damages). In no event shall Buyer's acceptance of Delivery of any delayed, advance, partial or excess Goods operate as a limitation, elimination or waiver of any right or remedy available to Buyer.

#### 7. Delivery.

7.1 Except to the extent expressly provided to the contrary in writing signed by Buyer, Seller shall make delivery of all Goods on a "Free on Board" FOB (Incoterms 2010) basis, to the appropriate carrier as designated per approved routing guide provided, at the address designated in the applicable Order, during normal business hours or as otherwise instructed by Buyer in writing. Seller shall inform Buyer immediately, if any deliverable or performance is subject, in whole or in part, to export restrictions under foreign trade rules, exchange control regulations or the terms of international embargos or export restrictions.

7.2 Seller shall package all Goods in accordance with the Specifications and any packaging instructions set forth in the Order. Seller shall be responsible for packaging the Goods in a manner sufficient to protect the Goods against damage and deterioration in transit, in compliance with all applicable Laws and carrier tariffs related to packaging. Seller shall properly label all packaged Goods with reference to Buyer's Order number, quantity, location for Delivery, and any special handling or storage requirements (including, without limitation, fragility, flammability, toxicity, corrosiveness, etc.).

7.3 Title to and risk of loss associated with the Goods, other than Defective Goods, shall pass to Buyer upon Delivery, free and clear of all liens, encumbrances, claims or reservations of Seller or any third party, but subject in all respects to Buyer's rights to reject or withhold acceptance of such Goods following Delivery. Upon Delivery, Seller hereby irrevocably waives any right of lien (whether arising under contract or operation of any Law) with respect to the Goods.

#### 8. Prices and Invoicing.

8.1 The prices for the Goods specified in the Order (the "Price") is fixed, and may not be modified except in accordance with the express provisions of this Agreement or by mutual written agreement of the parties signed by an authorized officer of Buyer. The Price includes all costs and services ordinarily attendant to "Free on Board" FOB (Incoterms 2010), including, without limitation, all costs and expenses relating to packaging (and the return or disposal thereof), transportation, Delivery, import and export licenses, customs duties and tariffs, insurance, warehousing and storage prior to Delivery, return of exchangeable containers, and all taxes, duties or levies imposed on the Goods or the transport, transfer, export, import, Delivery or purchase thereof (including, without limitation, any value added tax or excise tax). The Price may also include the assembly and/or installation of the Goods at Buyer's facility if expressly set forth in the Order, in such case the Seller shall be responsible for all tools, travel, consultation or other costs incurred in connection therewith. Seller represents and warrants to Buyer that the Price is not more, and the commercial terms of this Agreement are not less favorable, than the price(s) and commercial terms generally offered by Buyer to any third-party purchaser of similar goods or

services purchased by third parties in substantially similar volumes for comparable purposes. If any third party offers to supply the Goods to Buyer at a lower Price or upon terms more favorable to Buyer, Buyer may submit such offer in writing to Seller, and if Seller does not match such Price or conditions within ten (10) days following the date of such notice, Buyer shall have the option, exercisable in its sole discretion, to cancel the applicable Order without further obligation or liability to Seller.

8.2 Seller shall invoice Buyer separately for each Order, as and when Seller actually ships the Goods pursuant to an Order subject to this Agreement. Seller shall not invoice Buyer for Goods not yet actually shipped. Seller's invoice must prominently reference the Buyer's Order number, the date of the Order, the date of Delivery, the identity and quantity of Goods (with reference to Buyer's item number where applicable), and the Price in U.S. Dollars. Invoices received concurrent with Delivery will not be processed.

8.3 Seller's properly submitted invoice shall become due and payable Forty-five (45) days following receipt of such invoice, all documentation relating to Delivery and all documents of title to the Goods by Buyer. Buyer may, in its sole discretion, pay such invoice by wire transfer to an account designed by Seller, by check or other bill of exchange. Buyer may, in its sole discretion, retain the amount of any actual or reasonably anticipated claim against Seller, and set-off all amounts due from Seller to Buyer (whether arising under this Agreement or otherwise), from any payment or another amount due and owing to Seller. Seller hereby irrevocably waives any right of set-off or counterclaim against amounts due and owing to Buyer. The payment due date for any invoice or Goods subject to a *bona fide* dispute shall be suspended until such dispute is resolved; provided, however, that Buyer notifies Seller of such dispute in writing and pays, when due, that portion of the invoice not subject to dispute. Buyer and Seller shall cooperate in good faith to resolve the dispute regarding the Goods or Seller's invoice therefor in good faith, and Seller shall not suspend performance or Delivery of any Order on account of any such dispute.

#### 9. Warranty; Defect.

9.1 Seller represents and warrants to Buyer, which representations and warranties shall survive Delivery and acceptance of the Goods and this Agreement, that: (a) Seller has inspected the Goods prior to Delivery, and such Goods are not Defective (as defined below); (b) Seller has all requisite power and authority to enter into this Agreement and fulfill its obligations hereunder, and that this Agreement does not violate or conflict with any agreement, order or Law by which Seller or the Goods are bound; and (c) Seller is in compliance with all applicable Laws.

9.2 Goods shall be deemed "Defective" if Buyer determines that such Goods: (a) do not strictly conform to the Specifications; (b) are not merchantable; (c) are not fit for the purposes for which they are intended; (d) are not free from all liens or encumbrances of Seller or any third party; (e) do not comply with all applicable Laws; (f) standing alone, or when used or incorporated into any product or item, misappropriate or infringe any Intellectual Property (as defined below), confidential information or other proprietary right of any third party in any jurisdiction; (g) are not appropriately marked with the country of origin in accordance with all applicable Laws of the United States; (h) are not new, unused and of first-class materials and workmanship; (i) are not free from contamination, rust, waste or deterioration; and/or (j) are not safe, free from defects and workmanship and, to the extent of any Specifications provided or approved by Seller, free from defects in design.

9.3 Seller shall be liable for all costs, expenses and losses arising out of Defective Goods. With respect to any Defective Goods, Buyer may, in its sole discretion and in addition to any other right or remedy available to Buyer under this Agreement or at Law, do one or more of the following, each at Seller's sole cost and expense: (a) refuse or reject Delivery of Defective Goods; (b) return any Defective Goods to Seller at any time following

3 Delivery or acceptance by Buyer; (c) accept Delivery of the Defective Goods; (d) require Seller, on an expedited basis, to replace, repair or remanufacture the Defective Goods, or otherwise remedy any condition rendering such Goods Defective; (e) take any action, or engage any third party to take such action, that Buyer deems necessary or desirable to remedy any condition rendering such Goods Defective; (f) obtain, on an expedited basis, repair or replacement of such Goods from any third party satisfactory to Buyer; (g) cancel the applicable Order

and any other outstanding Order to Sellers; and/or (h) recover compensatory and consequential monetary damages, together with interest thereon, regardless of whether such damages were foreseeable to Seller or whether Seller was advised of the possibility thereof.

9.4 Buyer may inspect Goods upon Delivery on the basis of accompanying documents only for identity, quantity and readily apparent damage. Buyer may, in its sole discretion, inspect any sample of the Goods at any time upon or after Delivery, and deem all Goods subject to an Order Defective upon identification of Defective Goods in any sample thereof. Buyer reserves the right to identify any Defective Goods at any time, including, without limitation, during the ordinary course of Buyer's business, or upon any claim by a customer or end user of Buyer for warranty or defect of any product or item into which the Goods are incorporated. Buyer shall notify Seller of any Defective Goods within a reasonable time, and Seller hereby irrevocably waives any right to object to such notification of Defective Goods on grounds of delay. No inspection or failure to inspect the Goods by Buyer shall limit, eliminate or operate as a waiver of any of Seller's representations, warranties or obligations under this Agreement or any right or remedy of Buyer regarding Defective Goods.

#### 10. Intellectual Property and Confidential Information.

10.1 As between Buyer and Seller, and unless specifically and expressly agreed to the contrary in writing signed by an officer of Buyer, Buyer shall exclusively own all patents, copyrights, trademarks, trade secrets or other intellectual property or proprietary rights and any improvements, modifications or derivative works relating thereto ("Intellectual Property") provided or made available by Buyer pursuant to this Agreement, or incorporated into the Goods or the Specifications by Buyer or Seller (the "Buyer Intellectual Property"), including, without limitation, any information, formulations, drawings, models, tools, technical records, procedural methods, data, software, code, samples, and know how. All Buyer Intellectual Property created or developed in whole or in part by Seller shall be deemed a "work made for hire." Seller hereby assigns, agrees to assign, and shall cause its affiliates and contractors and its and their respective employees, agents and representatives to assign, all right title and interest in the Buyer Intellectual Property to Buyer.

10.2 As between Buyer and Seller, all business or technical information, formulations, drawings, models, tools, technical records, procedural methods, data, software, code, samples, and know-how disclosed, provided or made available by Buyer or obtained by Seller (whether verbally, in writing, by observation, by inspection or by any other means) pursuant to this Agreement, or incorporated into the Goods or the Specifications by Buyer or Seller, which Buyer deems confidential or proprietary ("Confidential Information"), shall be the exclusive property of Buyer. Confidential Information shall not include information that Seller can prove: (a) is or becomes available to the general public through no fault of Seller; or (b) is provided to Seller without restriction on use or disclosure by a third party duly authorized to provide such information. Seller shall maintain all Confidential Information in strict confidence, and shall not disclose any Confidential Information to any third party except: (i) as expressly permitted in writing signed by an authorized officer of Buyer; or (ii) as required pursuant to applicable Law; provided, however, that Seller first promptly notifies Buyer of such obligation, cooperates with Buyer to contest such disclosure or seek a protective order or other appropriate remedy at Buyer's expense, and then discloses only so much of the Confidential Information as Seller, in the good faith opinion of its legal counsel is legally compelled to disclose.

10.3 Seller may only make Buyer Intellectual Property and Confidential Information available to those of its Representatives who: (a) have a need to know such Buyer Intellectual Property or Confidential Information to fulfill the Order or Seller's obligations under this Agreement; (b) agree for the benefit of Buyer to abide by binding obligations restricting the use or disclosure of such Buyer Intellectual Property and Confidential Information as provided in this Agreement; and (c) for whom Seller shall be responsible for any breach or noncompliance with this Agreement, as if committed by Seller. Nothing in this Agreement shall grant Seller any right or license to the Buyer Intellectual Property or Confidential Information of Buyer. Seller may use the Buyer Intellectual Property and the Confidential Information only for purposes of fulfilling the Order and Seller's obligations under this Agreement, and for no other purpose or benefit. Seller shall not decompile or reverse engineer, or assist or facilitate any third

party to decompile or reverse engineer, any Buyer Intellectual Property. Upon fulfillment or cancellation of the Order, expiration or termination of this Agreement, or at any time upon the written request of Buyer, Seller shall promptly return or, at the option of Buyer, destroy, all information or materials (including any notes, summaries, reports or other materials created by Seller) containing or incorporating any Buyer Intellectual Property or Confidential Information and certify in writing to the return or destruction thereof.

#### 11. Buyer Tools.

11.1 Buyer shall exclusively own all tools, equipment or materials provided, made available or paid for by Buyer ("Buyer Tools"), including, without limitation all replacements thereof and any tools, equipment or materials manufactured or procured by Seller at Buyer's expense. Seller shall, at its sole cost, expense and risk of loss, and at no cost or expense to Buyer: (a) clearly and conspicuously identify, segregate and mark all Buyer Tools as Buyer's property; (b) keep the Buyer Tools free of all liens, encumbrances, claims and other rights of Seller or any third party; (c) hold, store and maintain the Buyer Tools in good condition and repair; (d) repair or replace all Buyer Tools that reach the end of their useful life or become lost, damaged, destroyed; (e) insure the Buyer Tools against all loss (including, without limitation, fire, flood, theft, vandalism, and extended coverage perils) and furnish Buyer a certificate of insurance naming Buyer as additional insured and loss payee; (f) use the tools exclusively for the purpose of fulfilling the Order and Seller's obligations under this Agreement, and for no other purpose or benefit; (g) upon fulfillment or cancellation of the Order, the expiration or termination of this Agreement, or at any time upon request of Buyer, promptly return and surrender the tools to the location designed by Buyer in accordance with all instructions provide by Buyer; and (h) not scrap the tools without Buyer's prior written consent signed by an authorized officer of Buyer. Except as otherwise expressly agreed in writing signed by an authorized officer of Buyer, Seller shall have no right, license, lien, set-off or claims with respect to Buyer Tools.

#### 12. Indemnity.

12.1 Seller shall indemnify, defend and hold Buyer, its affiliated entities, and its and their respective shareholders, members, partners, directors, officers, managers, employees, contractors, agents and representatives (together, "Representatives") harmless from and against any and all claims, demands, judgments, orders, damages, fines, penalties, costs, liabilities or losses (collectively, "Losses"), including, without limitation costs of negotiations, proceedings or enforcement, and any attorneys', accountants' and expert witnesses' fees, arising out of, relating to or resulting from: (a) breach of any representation, warranty, covenant or other obligation set forth in this Agreement on the part of Seller; (b) Defective Goods; (c) premature, delayed, incomplete or excess Delivery of Goods or other failure to comply with the Delivery Schedule; (d) actual or alleged infringement of misappropriation of any Intellectual Property, confidential information or other proprietary right of any third party on the Part of Seller or the Goods, except to the extent directly resulting from Specifications solely provided by Buyer; (e) death, personal injury, or damage to property of any of Seller's Representatives or relating to Defective Goods or the incorporation of Defective Goods into any product or item; (f) voluntary or mandatory recall or repair campaign relating to any Defective Goods, or products or items incorporating Defective Goods; and/or (g) negligent acts or omissions, willful or reckless misconduct, or violation of applicable Law on the part of Seller or its Representatives. Seller's indemnification obligations set forth in this Section shall not apply to the extent of Losses caused by negligent acts or omissions, willful or reckless misconduct, or violation of

4

applicable Law on the part of Buyer or its Representatives. Buyer shall retain sole authority to negotiate, litigate, settle and resolve all Losses subject to indemnification pursuant to this Section, by counsel and Representatives satisfactory to Buyer, in its sole discretion. Buyer shall notify Seller of any Losses subject to indemnification pursuant to this Section within a reasonable time; provided, that failure to provide such notice shall in no event limit, eliminate or waive Seller's indemnification obligations pursuant to this Section.

12.2 Seller shall at all times maintain the following policies of insurance coverage, issued by insurers reasonably satisfactory to Buyer: (a) worker's compensation in accordance with minimum standards provided by Law; (b) commercial general liability with

limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate; (c) products liability with limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate; (d) completed operations and contractual liability; (e) all risks property; and (f) automobile liability. At any time upon request of Buyer, Seller shall furnish certificates of insurance to Buyer evidencing the coverage required pursuant to this Section, naming Buyer as an additional insured and providing that such policies of insurance may not be cancelled, terminated or not renewed upon not less than thirty (30) days' advance notice to Buyer. Seller hereby irrevocably waives, and shall cause its insurers to waive, any right of subrogation against Buyer. In no event shall Seller's liability to Buyer be limited to the amount of available insurance.

### **13. Notices; Electronic Communications.**

13.1 All notices required or permitted to be given pursuant to this Agreement shall be in writing, addressed to the respective parties at the addresses set forth on the Order or to another address designated by such party by notice given pursuant to this Section. Such notices shall be deemed given: (a) when personally delivered; (b) when sent by email or facsimile with confirmation of receipt; (c) one (1) day after being sent by reputable overnight delivery service (e.g. UPS, FedEx, etc.), postage prepaid; or (d) three (3) days after being sent by United States registered or certified mail, postage prepaid, return receipt requested. Upon Buyer's request, Seller shall use email or other electronic means designated by Buyer for all Orders and other communications pursuant to this Agreement. All electronic transfers and communications made in accordance with Buyer's instructions shall have the same effect as original documentation.

### **14. Termination; Cancellation.**

14.1 Buyer may, in its sole discretion, terminate this Agreement or cancel any Order in whole or in part without further obligation or liability to Seller upon: (a) receipt of Defective Goods; (b) premature, delayed or incomplete Delivery or other failure to comply with the Delivery Schedule; (c) breach of any representation, warranty, covenant or obligation set forth in this Agreement on the part of Seller; (d) Seller's insolvency, inability to pay debts as they become due; (e) the voluntarily involuntary filing of any petition for insolvency, bankruptcy or reorganization on the part of Seller; (f) appointment of a receiver or trustee for Seller; or (g) Buyer's determination that Seller will be unable to fulfill any Order or its obligations pursuant to this Agreement. Buyer may also, in its sole discretion, terminate this Agreement or cancel any Order in whole or in part without cause or for convenience upon notice to Seller.

14.2 The parties' respective rights and obligations pursuant to Sections 1, 3, 4, 6.3, 7.3, 7.4, 8.3, 9, 10, 11, 12 and 16 of these Terms shall survive expiration or termination of this Agreement, or fulfillment or cancellation of the Order, for any reason.

### **15. Changes of Order; Amendment; Waiver**

15.1 Seller shall cooperate in good faith with Buyer to accommodate any change or modification to the Order, Specifications or Delivery Schedule requested or proposed by Buyer, and the Price shall be subject only to equitable adjustment in proportion to the change in Seller's costs and expenses of labor and materials in fulfilling the Order directly attributable to such change or modification. No change or modification to the Order, Specifications or Delivery Schedule, and no corresponding change in the Price shall be valid unless expressly set forth in writing signed by an authorized officer of Buyer. This Agreement and any Order may not be amended or modified, and no provision of this Agreement or any Order may be waived, except as expressly agreed in writing signed by an authorized officer of Buyer. No failure to exercise any right or remedy shall be deemed or construed as a waiver of such right or remedy, and no written waiver of any breach shall be deemed or construed as a waiver of any continuing breach or any other provision of this Agreement.

### **16. Applicable Law.**

16.1 The Order and this Agreement is made in the English language only and shall be governed and construed exclusively in accordance with the Laws of the United States and the State of Wisconsin, without regard to any conflicts of law's provisions. Any dispute or proceeding arising out of or in connection with this Agreement shall be heard exclusively before the federal courts of the United States located in the Eastern District of Wisconsin and the courts of the State of Wisconsin located in Calumet County. The parties hereby voluntarily, knowingly and irrevocably consent to the personal jurisdiction of such courts and waive any

objection as venue or forum. Notwithstanding the foregoing, Buyer may enforce any judgment or seek any injunctive or equitable relief against the Seller in any court with component jurisdiction over Seller or its assets. For the avoidance of doubt, the UN Convention on the International Sale of Goods (C.I.S.G.) and other international conventions or uniform law on the sale of Goods shall not be applicable.

16.2 This Agreement sets forth the entire understanding of the parties with respect to the Goods, and supersedes all other written or oral discussions, negotiations or agreements regarding the subject matter hereof. In the event of any conflict or inconsistency between these Terms and the other provisions of the Agreement set forth in the Order, these Terms shall control and govern in all respects. This Agreement shall be enforced without applicability of any rule of construction or prejudice against the party that drafted this Agreement. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions in this Agreement shall continue in full force and effect and, to the extent permitted by Law, the invalid or unenforceable provision shall be deemed modified to the limited extent necessary to render it valid and enforceable in accordance with the intentions of the parties as expressed in this Agreement.

### **17. Assignment; Representatives.**

17.1 Seller may not assign, delegate or subcontract any of its right or obligations under the Order or this Agreement without prior written consent signed by an authorized representative of Buyer, in Buyer's sole discretion. Any attempted assignment, delegation or subcontract of Seller's right or obligations under the Order or this Agreement in violation of this Section shall be null and void. Notwithstanding any assignment, delegation or subcontract of the Order or this Agreement authorized by Buyer, Seller shall at all times remain liable to Buyer for the fulfillment of the Order, the performance of this Agreement, and any act or omission Seller's assignee, delegate or subcontractor and its and their respective Representatives, as if committed by Seller. This Agreement shall inure to the benefit of the parties, their respective successors and permitted assigns. There are no third-party beneficiaries of this Agreement.

[End.]

Revised and updated: June 2020