

Purchase Order Terms & Conditions

These **Purchase Order Terms and Conditions** (the “**Terms and Conditions**”) are part of each purchase order Thompson Pump or any of its affiliates, whether currently an affiliate or subsequently becoming an affiliate (collectively, “Thompson”) issues. In these Terms and Conditions, “**Buyer**” means Thompson or its affiliate(s), as specified in the purchase order, “**Seller**” means the seller named in the order, “**goods**” and “**services**” mean the goods or services that Buyer is to purchase from Seller, as described in the purchase order, “**Agreement**” means the agreement formed pursuant to the purchase order (including the terms of these Terms and Conditions), “**Order**” means the purchase order, and “**affiliate**” of Buyer or of Thompson means at any time, whether currently existing or subsequently arising, any corporation, limited liability company, partnership or other entity or individual that then controls, is controlled by, or is under common control with, Buyer or Thompson, as applicable:

- 1. Agreement.** The Order is subject to these Terms and Conditions and will apply to Buyer’s purchases from Seller to the exclusion of any additional or different terms contained in Seller’s quotation, proposal or acknowledgment, or otherwise proposed by Seller. If there is ever a conflict between a provision of any such written agreement and a provision of these Terms and Conditions, then the provision of these Terms and Conditions shall prevail. The Order, including these Terms and Conditions, and the written agreement, if any, contain all of the terms of the Agreement between Seller and Buyer with regard to its subject matter and supersedes all prior oral or written representations, agreements and other communications between Seller and Buyer, and may be only amended by a writing signed by duly authorized representatives of Buyer and Seller.
- 2. Acceptance.** Seller’s acceptance of these Terms and Conditions shall be conclusively presumed by Seller’s shipment of the goods or performance of the services requested under the Agreement and/or the Order, or by Seller’s return to Buyer of an acknowledgement of this Order. No modification, amendment or waiver of any term or condition in the Order or herein shall be effective, nor shall any additional or different terms or conditions, whether set forth in an invoice, confirmation, online terms of use or service or elsewhere, or pursuant to any course of dealing, usage of the trade or Buyer’s acceptance of any goods or services, be effective, unless set forth in a writing signed by Buyer and Seller.
- 3. Order Price.** The price to be paid by Buyer and stated on any Order shall not be increased unless specifically authorized in writing by issuance of a

revised Order by Buyer. Unless otherwise specified in the Order, the price stated includes packing, insurance, freight, and delivery.

4. **Quantities.** Quantities shall be as set forth in the Buyer's purchase order or other written agreement signed by Buyer and Seller. Unless otherwise expressly agreed-upon by the parties in writing, Buyer shall have no minimum purchase obligation from Seller. Forecasted quantities or values provided by Buyer in a Purchase Contract shall not represent a binding obligation on Buyer. Quantities ordered from Seller must not be exceeded upon delivery without **prior** written permission from Buyer, except on bulk items where the Specifications set forth standard allowable overages. Quantities delivered must not be less than ordered by Buyer, unless Seller received written permission from Buyer.

5. **Taxes.** Unless otherwise agreed by Buyer in writing, Buyer shall not be required to pay any sales, use or other taxes (whether federal, state or local), assessments, fees or duties arising because of Buyer's purchase from Seller or Seller's manufacture, performance or sale of the goods or services (including, without limitation, any tax, assessment, fee or duty measured or imposed upon Seller's income, payroll or property and any franchise tax) ("**Taxes**"), and Seller shall be responsible and liable for paying, and shall pay, all Taxes.

6. **Payment Terms.** Unless otherwise agreed by Buyer in writing, payment is only due from Buyer upon final completion and delivery **and acceptance** of the goods, articles, equipment, intellectual property, and/or services. Invoices shall be payable as stated on the Order, or Net 60 days from receipt and acceptance of the Invoice: Buyer may withhold payment in whole or in part without Buyer becoming liable to Seller if Buyer has reasonable grounds to believe that Seller may be liable to it, has defaulted, may default, or that a lien may be filed, provided that such withholding shall only be to the extent, and for so long as is necessary, in Buyer's reasonable judgment.

7. **Delivery.** Unless Buyer agrees otherwise in writing, Seller shall deliver the goods DDP ("delivered duty paid") (Incoterms 2022) at Buyer's facility identified in the order, except that if Buyer's facility and Seller's facility from which the goods will be shipped are both located in the United States, then Seller shall deliver the goods F.O.B. (as that term is defined in the Florida Uniform Commercial Code) Buyer's facility identified in the order and shall be made at Seller's expense and risk of loss. Buyer may, at its option, take delivery of all or any part of the goods at Seller's facility, in which case risk of loss for such goods shall shift to Buyer when Buyer or its shipping agent departs Seller's facility after taking delivery of the goods. Seller shall use any mode of shipment, carrier and routing that Buyer specifies. Delivery shall be made in the quantities and at the times specified by Buyer to Seller. Unless

the Buyer agrees otherwise in writing, Seller shall deliver all of the Goods in a single delivery and not in installments. If Seller delivers the goods before the scheduled delivery date, Buyer may, at Seller's **sole** expense and risk, either store them or return them to Seller. Buyer's acceptance of an early delivery shall not change the payment terms. Buyer shall not be liable for payment for goods delivered in excess of the quantities or after the times specified in Buyer's delivery instructions to Seller. Time is of the essence, and Buyer's stated delivery date(s) or performance schedule and the date for performance of any other obligation of Seller shall not be extended or excused for any reason, including anything that Seller cannot control.

8. Packaging & Shipping Requirements for Ingredients & Raw Materials.

Supplier shall ensure that such packaging for Products or raw materials is in accordance with industry standards and is suitable for Buyer's intended use/purpose.

9. Changes. Buyer may make changes within the general scope provided in this Agreement. If Seller accepts Buyer's terms for the change, or commences performance of the change without objection to such terms, or if Seller does not object to such terms in writing within ten (10) days after notice of such change is sent to it, Seller shall be bound by Buyer's proposed terms. Buyer may cancel, modify or suspend any Order if such cancellation, modification or suspension is made prior to shipment. Buyer may at any time, by reasonable advance written notice to Seller, change the Agreement as to (a) designs or drawings of, or specifications, standards, performance criteria, or other requirements for, the goods or services, (b) time, place, frequency or schedule of delivery or performance, (c) method of packing or shipment, or (d) quantity of the goods or extent of the services. With the exception of a change or suspension to delivery schedules, if any of the above changes causes a change in Seller's cost or time of performance, then an equitable adjustment shall be made in the price or time for delivery or performance, or both, if, but only if, Seller gives Buyer a written request for an adjustment within thirty **calendar (30)** days after Buyer notifies Seller of the change and Buyer consents in writing to the change. The Seller shall give reasonable advance written notice to the Buyer of any proposed change to (a) designs or drawings of, or specifications, standards, performance criteria, or other requirements for, the goods or services, (b) time or place of delivery or performance, (c) method of packing or shipment, or (d) quantity of the goods or extent of the services. The Seller shall not deliver product with aforementioned changes without prior written authorization from an authorized representative of Buyer.

10. Inspection. Buyer and its designees may at any time inspect or have inspected items or work covered by this Agreement at the place of

manufacture or fabrication prior to acceptance. Seller shall provide and bear the cost, including charges of third parties, of any testing or inspection, facilities, equipment and personnel required in connection with any testing or inspection to be carried out by the Buyer or Seller hereunder. Buyer's authorization to ship after inspection or Buyer's failure to inspect, or on inspection failure to reject, shall not relieve the Seller from responsibilities set forth in the applicable Order. Regardless of where Buyer takes delivery of the goods, Buyer reserves the right to inspect, test and approve goods described in any Order, as well as the right to reject any goods not conforming to the terms of any Order. To the extent Buyer rejects goods as nonconforming, the quantities under that Order will automatically be reduced unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced without a new Order from Buyer. Non-conforming goods will be held by Buyer for disposition in accordance with Buyer's receiving requirements at Seller's risk. Payment for non-conforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to any legal or equitable remedy, or relieve Seller's responsibility for latent defects. The Seller shall perform reasonable amounts of testing and inspection with respect to each shipment of the goods to ensure the products comply with the requirements of the Order.

11. **Expediting.** Seller shall assist Buyer and his designees in expediting. This obligation includes the furnishing of such information and such access to the plants of Seller and its sub-suppliers as Buyer may require.

12. **Warranty.** In addition to any implied warranties or those provided herein and in the Order, Seller represents and warrants that, (a) all items and services will conform to Seller's and Buyer's specifications and drawings (the "**Specifications**"), (b) the goods and services and all materials that Seller furnishes in connection with the services shall be merchantable, of good material, workmanship and quality, fit for the purposes for which Buyer intends them and free from faults and defects, and (c) the goods, their manufacture, packaging, labeling, branding and sale and the services shall comply with all applicable federal, state, local and foreign laws, regulations, standards and orders. Without limitation of its other rights and remedies, Buyer may, in cases where this warranty is breached, or where defects or deficiencies appear within twenty-four (24) months after the date of delivery of goods or provision of services, either reject the items and/or services, in whole or in part, in which case the risk of loss, cost of return and storage, and other damages, will be the responsibility of the Seller. Alternatively, the Buyer may repair all or part of the defective or deficient items and/or services and charge to the Seller the cost of repair plus an amount equal to the diminished value of the items or services as repaired. Warranties under this Agreement are also for the benefit of any party to which Buyer supplies the items and/or

services or to which the Buyer is correspondingly or similarly liable with respect thereto. Buyer expressly rejects any attempt by Seller to limit contractual or implied warranties. Any "Limited Warranties" or "Limitation of Liability" asserted by Seller is rejected by Buyer.

Seller represents and warrants to Buyer, its customers and assigns, and agrees, that as of the date of the Agreement (or such other date or dates specified in a particular representation or warranty) that the following statements are true and correct: (a) the Agreement is the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms; (b) Seller has all necessary experience, qualifications, expertise, authority, licenses and permits to enable it to perform its obligations under the Agreement; (c) Seller is and, at the time of each delivery of the goods will be, solvent; (d) neither Seller nor Seller's agents have offered or given, and shall not offer or give, any gratuity or thing of value to any employee of Buyer or of any affiliate of Buyer; (e) any oral or written merchandise plan, advertising or promotion plan, payment, discount, or allowance and/or any service or facility Seller (either directly or through its agents) offers, gives, or pays to Buyer, complies with the applicable provisions of the Clayton Act, as amended by the Robinson-Patman Act, and the Federal Trade Commission Act; (f) Seller is and shall continue to be in compliance with all applicable federal, state, local and foreign laws, regulations, standards and orders, including, without limitation These warranties shall be in addition to any other warranties stated in this Agreement or available to Buyer under applicable law. Seller is responsible to provide Buyer any information requested by Buyer that is necessary or helpful to Buyer in complying with any and all federal, state, local and foreign laws, regulations, standards and orders that may apply to the goods or services provided by Seller under the Agreement.

13. **Indemnity.** Seller shall indemnify, defend and hold harmless Buyer, its affiliates, officers, directors, employees, agents, representatives, customers and other end-users of the goods (collectively with Buyer, called "**Indemnitees**") from and against any and all actions, suits, claims, demands, and proceedings, and any judgments, damages, losses, debts, liabilities, penalties, fines, costs and expenses (including court costs and reasonable attorneys' fees) suffered or incurred by any such person arising from or in connection with: (a) Seller's breach of any representation or warranty hereunder, (b) Seller's negligent acts or omissions, (c) Seller's willful misconduct or violation of law, or (d) any death, injury or damage to any person or property (including any Indemnitee's property and employees) caused by the goods or services or by Seller's manufacture of the goods or performance of the services attributable to Seller's failure to produce the goods or render the services in compliance with the Specifications. Any provisions of these Terms and Conditions requiring Seller to maintain

insurance for property damage, personal injury, death and economic damage shall not be construed to affect or impair the generality of the foregoing. Notwithstanding the foregoing, Seller shall not be required to indemnify Indemnitees against or hold Indemnitees harmless from Buyer's own willful misconduct or gross negligence or from claims, liabilities, losses, damages, and expenses resulting solely from Buyer's breach of any of its representations, warranties, or covenants made in the Agreement.

Buyer agrees to indemnify and hold Seller and Seller's agents and employees harmless from and against any and all claims and causes of action brought against Seller and from any and all damages, losses, expenses, attorneys' fees, cost and liabilities sustained by Seller arising **solely** out of Buyer's willful misconduct or gross negligence in the performance of its obligations under this Agreement.

14. **Buyer's Rights.** Without limiting other rights and remedies available to it, Buyer may, at its option, (a) return nonconforming goods or services to Seller, at Seller's risk and expense, as long as Buyer would then have the right under applicable law to reject or to revoke acceptance of those goods or services, and require Seller either to refund the price or promptly to repair or replace the goods, or re-perform the services, at Seller's risk and expense, (b) retain nonconforming goods or services and set off losses against any amount after consultation and agreement of Seller that Buyer or any affiliate of Buyer owes Seller, or (c) repair or replace nonconforming goods or obtain conforming services from a third party, and charge Seller with the expense. If at any time Buyer believes in good faith that it has grounds for insecurity as to Seller's performance, then Seller shall provide adequate assurance of due performance within seven (7) days after Buyer demands the assurance, which shall be considered to be a reasonable time. If at any time (i) Seller defaults in the performance of any of Seller's obligations to Buyer under the Agreement or under any other agreement between Seller and Buyer and Seller fails to cure the default within a reasonable time after Buyer provides notice of the default to Seller, (ii) Seller repudiates the Agreement, or (iii) any warranty or representation that Seller shall have made to Buyer in or in connection with the Agreement is false or misleading in any material respect, then Buyer may terminate the Agreement, in whole or part, without liability to Seller, and Seller shall promptly pay to Buyer all damages that Buyer incurred as a result of the termination and as a result of the event or circumstance on the basis of which Buyer terminated. If Buyer does terminate the Agreement, then Seller (i) shall, unless Buyer directs otherwise, stop work and acquisition of materials under the Agreement and protect property in Seller's possession in which Buyer has or may acquire an interest for a reasonable period of time sufficient to allow Buyer to provide for the disposition of the property and (ii) if and to the extent that Buyer demands, shall immediately deliver to Buyer all finished

and unfinished goods and all work-in-process and raw materials that Seller acquired for use in the manufacture or processing of the goods and all designs, drawings, specifications, formulas and recipes related to any goods that Buyer is purchasing from Seller under the Agreement, all intellectual property rights in the foregoing. Termination under this Section shall terminate only Seller's obligation and right to deliver goods or provide services under any provision of the Agreement other than this Section and shall not terminate or impair Seller's other obligations, or any of Buyer's rights, under the Agreement. In addition to Buyer's rights described in these Terms and Conditions, Buyer has all of the other rights and remedies that the law gives to buyers. Buyer shall not lose any right just because it does not exercise it.

BUYER'S DAMAGES FOR ANY BREACH BY SELLER (WHETHER OR NOT BUYER TERMINATES THE AGREEMENT BY REASON OF THE BREACH) FOR WHICH SELLER IS LIABLE, INCLUDE, ALL DAMAGES SUFFERED BY BUYER AS A RESULT OF SUCH BREACH, INCLUDING WITHOUT LIMITATION, ANY COST OF "COVER" OR OF COMPLETING THE MANUFACTURE OR PROCESSING OF THE GOODS, AS WELL AS ALL INCIDENTAL, CONSEQUENTIAL, LOST PROFITS AND OTHER DAMAGES (INCLUDING ACTUAL ATTORNEY FEES).

15. **Confidential Information.** Seller agrees that any technical information disclosed to Buyer in connection with the goods covered by any Order is not confidential and Seller will not assert any claim (other than one for patent infringement) against Buyer with respect to that information. Any technical information disclosed by Buyer to Seller is confidential and Seller agrees not to use or disclose any such information without prior written consent of Buyer. Seller shall not sell or offer to sell or otherwise provide to anyone other than Buyer any goods made in accordance with any designs, drawings, specifications, standards, performance criteria or other requirements that Buyer furnishes to Seller or that incorporate, embody or are made in accordance with any of Buyer's intellectual property. Seller shall maintain the confidentiality of, and shall not disclose or use or permit to be disclosed or used or to be viewed by any third party (including any of Seller's suppliers), the goods, any designs or drawings of or specifications, technical information, standards, performance criteria or other requirements for the goods or services, any Buyer Property or any information concerning Buyer's business, operations or activities, including, without limitation, information concerning Buyer's present or proposed products, product developments, plans, strategies, finances, know-how, sales, customers, marketing or sales techniques, or the existence of the order or the Agreement or that Seller will sell, or has sold, or has agreed to sell, goods or services to Buyer ("**Confidential Information**"), provided, however, that Seller may disclose

Confidential Information (a) to a third party (other than a competitor of Buyer or a subsidiary or affiliate of a competitor) to the extent disclosure is necessary in order for Seller to perform its obligations under the Agreement if, prior to any such disclosure, Seller obtains from the third party a written statement, in a form pre-approved by Buyer, that the third party agrees to be bound by the confidentiality obligations of this Section of these Terms and Conditions to the same extent as Seller, (b) to the extent necessary to enforce its rights under the Agreement or to defend a claim arising under the Agreement, and (c) as required by applicable law and, provided further, that Confidential Information shall not include (i) information that is or becomes generally known in the industries in which Buyer or Seller operate other than as a result of disclosure by Seller, (ii) information that is disclosed to Seller by a party that, to Seller's actual knowledge, is not under a legal or fiduciary duty to Buyer not to disclose the information, and (iii) any information that Buyer acknowledges in writing is not confidential. If Seller breaches or threatens to breach this Section of these Terms and Conditions, then Buyer's remedies at law will be inadequate. Therefore, Buyer shall have the right of specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and Buyer's rights and remedies shall be cumulative. If Buyer and Seller have signed a separate agreement that addresses some or all of the subject matter of this Section, then both the other agreement and this Section shall be effective, but if there is a conflict between them, then the conflicting provision of the other agreement shall control.

16. **Ownership.** Seller hereby acknowledges and agrees that it shall not acquire by implication or otherwise any right or license on or title to any Confidential Information communicated by or acquired from Buyer. All right, title and interest in and to all Confidential Information and information derived from the Confidential Information, including but not limited to all registerable and patent rights which may subsist therein, shall be held and owned solely by the Buyer, and where applicable, all goods, articles, equipment, intellectual property and/or services provided under the Agreement shall be considered "works made for hire." Seller shall take all actions deemed necessary by the Buyer to protect the Buyer's rights therein. In the event that the goods, articles, equipment, intellectual property and/or services shall be deemed not to constitute works made for hire, or in the event that Seller should otherwise, by operation of law, be deemed to retain any rights not provided by this Agreement (whether moral rights or otherwise), Seller agrees to assign to Buyer, without further consideration, Seller's entire right, title and interest in the goods, articles, equipment, intellectual property and/or services.

17. **Property Furnished by Buyer.** All Confidential Information, including without limitation drawings, specifications, materials and/or equipment Buyer furnishes to Seller in connection with Seller's manufacture of the goods or performance of the services ("**Buyer Property**") shall remain Buyer's property. While in Seller's possession, Seller shall (a) preserve and protect all Buyer Property, (b) bear the risk of loss with respect to any Buyer Property, (c) refrain from using any Buyer Property for any purpose other than fulfilling its obligations to Buyer, and (d) turnover all or any portion of Buyer Property to Buyer upon demand at Seller's expense. If Seller breaches or threatens to breach this Section of these Terms and Conditions, then Buyer's remedies at law will be inadequate. Therefore, Buyer shall have the right of specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and Buyer's rights and remedies shall be cumulative.

18. **Government Contracts.** If Buyer will use the goods or services in connection with a contract with the United States or other government, then all terms and conditions that the government contract or any law or regulation requires to be included in any contract formed pursuant to the order ("**Government Terms**") are incorporated in the order by reference, if applicable, including but not limited to, **the requirements of 41 C.F.R. 60-1.4(a), 41 C.F.R. §60-300.5(a) and 41 C.F.R. §60-741.5(a). These regulations prohibit discrimination against (1) any employee or applicant because of race, color, religion, sex, sexual orientation, gender identity, national origin, or age (2) qualified protected veterans and (3) qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.** If any provision of the order is inconsistent with any Government Terms, then the Government Terms shall control.

19. **Patents and Similar Rights.** Seller shall indemnify and hold harmless Buyer for all costs, loss, and expense arising from any infringement or claim of infringement of any patent or proprietary right arising from Seller's performance under this Agreement, including any litigation costs and reasonable attorneys' fees, and charges or replacements to avoid infringements. At Buyer's request, Seller shall defend any suit or action arising out of any such infringement or claim, but Buyer shall be entitled to be fully advised and to participate in any such suit or action. No such suit or action shall be settled or discontinued, nor shall judgment be permitted to be entered, without Buyer's consent, if Buyer's interest would be adversely affected. If Buyer, from time to time, so elects, those to which Buyer furnished the items covered by this Agreement or to which it is correspondingly liable shall have the same rights as Buyer under this Section 18. Seller's indemnity

does not extend to items manufactured to Buyer's own specific design unless originally submitted or suggested by Seller.

20. Advance Payments. If payments are made by Buyer prior to delivery, Buyer may require that the goods in process be marked or otherwise identified and Seller shall execute such documents, including security agreements, as are in Buyer's opinion necessary to protect Buyer's interest therein.

21. Insurance. If advance payments are made, Seller shall procure, pay for and maintain insurance coverage for full replacement value with insurance providers satisfactory to Buyer.

Seller shall maintain in effect, at Seller's expense, commercial general liability insurance coverage that will protect Seller and Buyer from any and all claims and liabilities for property damage, personal injury, death or economic damage, to any person, that arises from the Seller's goods, their use or consumption or the performance of the services or any activities connected with the goods or services in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence and umbrella liability in the minimum amount of Five Million Dollars (\$5,000,000). Seller shall maintain in effect, at Seller's expense, workers' compensation and employers liability insurance coverage. Seller shall maintain in effect, at Seller's expense, auto liability coverage with a limit of One Million Dollars (\$1,000,000).

Seller agrees to include Buyer, Buyer's affiliates and related companies, and their respective directors, officers, employees and agents as an additional insured to its general liability, automobile liability, and excess or umbrella policies. If applicable, the terms and provisions of any excess or umbrella policies shall "follow form" to the terms of the underlying general liability policy. Seller agrees to provide to Buyer all applicable additional insured endorsements which may affect Buyer's status as additional insured. Seller's insurance described herein shall be written on a primary and non-contributory basis with Buyer's insurance. Supplier further agrees, before providing any service or supplying any goods, articles, or equipment to Buyer, to provide Buyer with a copy of each Certificate of Insurance identifying Buyer as certificate holder and as additional insured, and to provide a copy of each Certificate of Insurance annually thereafter until Seller is no longer providing services, goods, equipment and/or articles directly or indirectly to Buyer. Seller shall provide thirty (30) day written notice to Buyer prior to the cancellation or expiration of such insurance policies or any material change adverse to the interest of the additional insureds. All insurance that this Section requires shall be of the types and in amounts, and shall contain

endorsements, and shall be issued by insurers having an A.M. Best financial rating of "A-" or better.

22. **Services.** With respect to any services, (a) Seller is an independent contractor, and neither Seller nor any of Seller's employees or agents shall be considered agents or employees of Buyer, and (b) Seller shall furnish or obtain, at Seller's expense, all labor, materials, equipment, transportation, facilities, permits, licenses, bonds and other items that are necessary to perform the services.

23. **Export and Import Requirements.** Seller shall prepare, maintain and, to the extent that applicable law, regulation or customs authority requires it to do so, submit to the applicable customs authorities, all information and documentation that is necessary to comply with the applicable customs and export and import requirements of each country from which the goods will be exported and each country into which they will be imported, and Seller shall comply with all other applicable customs requirements. Whenever Buyer requests it to do so, Seller shall promptly furnish to Buyer copies of that information and documentation. Seller is solely responsible for complying with all technical compliance and country of origin requirements of each country into which the goods are to be imported.

24. **Assignment.** Seller shall not assign its rights or delegate, subcontract or assign its duties under these Terms and Conditions or any Order or Agreement without Buyer's prior written consent, which may be withheld for any reason. Buyer's consent to Seller's delegation, subcontracting or assignment of any obligation of Seller under the Agreement shall not relieve Seller of responsibility or liability for performance of the obligation. Notwithstanding if any of Seller's rights to proceeds which by law may be assigned notwithstanding a contractual prohibition against such assignment, and such proceeds are actually or attempted assignment, attachment garnishment, or claimed by a third party with respect to Seller's rights (including rights to amounts due or to become due) under this Agreement shall entitle Buyer to withhold all payment until full performance by Seller and thereafter until Buyer has determined to its complete satisfaction to whom such funds are payable and that Buyer is fully protected from any possibility of conflicting claims by Seller, its assignee or any third party and from any cost, damage, expense, or loss (including those hereinafter defined) and shall further entitle Buyer to recover out of the funds payable hereunder or otherwise from Seller any cost, expense, or loss which Buyer incurs as a result thereof (including court costs and reasonable attorneys' fees) including those attributable to suits by Buyer for declaratory relief. Buyer may assert any counterclaim or set off which Buyer has against Seller against any

assignee, whether or not such counterclaim or set off arose under or with respect to this order.

25. **Disputes.** Interpretation and enforcement of this Agreement will be in accordance with the laws of the State of Florida, County of Volusia, United States of America, without giving effect to choice of law principles thereof. Seller will and hereby does consent to the laws of, service of process from, and the jurisdiction of the courts of the State of Florida, County of Volusia. Seller hereby waives any claim of forum non conveniens or the right to bring an action or suit in any other place and hereby consents to venue in the state and federal courts of Florida, County of Volusia. **JURY TRIAL WAIVER: TO THE EXTENT PERMITTED BY LAW, IN ANY ACTION TO ENFORCE OR INTERPRET THIS CONTRACT, BUYER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY, THIS WAIVER BEING A MATERIAL INDUCEMENT TO ENTERING INTO THIS CONTRACT.**

26. **Compliance with Laws.** Seller warrants that it will comply with all applicable codes and laws, including but not limited to, the Fair Labor Standards Act of 1938 (as amended); laws and rules enacted, suggested or promulgated by the Occupational Health and Safety Administration; all laws concerning slavery and human trafficking in the country or countries in which Seller is doing business; the Walsh Healey Act; and all applicable unfair competition and deceptive trade practice or business protection laws. Where applicable, Seller warrants that it is an EEO/AA employer and shall comply with Executive Order 11246, as amended, and all other related applicable regulations including, without limitation, 41 CFR 60-1, 60-250, 60-300, 60-741, and 29 CFR part 470.

27. **Bankruptcy.** Buyer may immediately cancel the Agreement or any Order without liability to Seller in the event of the happening of any of the following or any other comparable event: (a) insolvency of the Seller; (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of an involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller, or (e) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not withdrawn, vacated or nullified within fifteen (15) calendar days of such event.

28. **Termination.** Buyer may terminate, in whole or in part, Seller's further performance and Buyer's obligations under this Agreement and the Order at any time by written notice to Seller. This Section shall not be construed as limiting any other rights or remedies available to Buyer. The representations, warranties and guarantees, and indemnification obligations of Seller contained in this Agreement shall survive the termination of this Agreement.

29. **Records.** Seller shall maintain complete and accurate records of all transactions and activities of Seller that relate to Seller's sales of goods and services under the Agreement and shall permit Buyer and its agents, upon reasonable prior notice, to enter Seller's premises during Seller's normal business hours to inspect the facility and those records that are reasonably asked for and are reasonably available, to the extent that Buyer believes in good faith that an inspection and/or audit of the facility and/or records is necessary to determine whether Seller is complying or has complied with its obligations under the Agreement.

30. **Notices.** Any notice or other communication that is required or permitted under the Agreement shall be in writing and shall be effective (a) when personally delivered or sent via electronically to an email address (with read receipt) specified in the order, (b) the next business day after delivery to a nationally-recognized overnight delivery service designated for next business day delivery with all charges prepaid, or (c) three (3) days after mailing if sent by certified mail, return receipt requested, postage prepaid, addressed to Buyer or Seller, as applicable, at its address specified in the order or to another address that a party shall specify to the other by written notice, except that a notice or other communication may be given orally, including by telephone, if it is confirmed by written notice given the same day.

31. **Remedies; No Implied Waiver.** Seller acknowledges that any breach of this Agreement will result in irreparable harm to Buyer for which damages would be an inadequate remedy and therefore, in the event of such breach, in addition to its rights and remedies otherwise available at law, Buyer shall be entitled to equitable relief, including injunction and specific performance. The remedies in this Agreement and any Order shall be cumulative and in addition to any other remedies allowed to Buyer under applicable law. The failure of either party at any time to require performance by the other party of any provision of this Agreement or any Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Agreement or any Order constitute a waiver of any succeeding breach of the same or any other provision.

32. **Entire Agreement; Conflicts.** Buyer and Seller agree that this Agreement shall supersede and control over any "conditions of sale" or other terms and conditions of Seller on any order form, proposal, quote, invoice, or previous or subsequent document of Seller to the extent such conflicts with the terms and conditions herein, unless such document is signed by both parties and expressly and unambiguously indicates that it is an amendment of this Agreement. Any conflicting terms and conditions of sale proposed by Seller with respect to any shipment(s) or sale(s) hereunder are rejected by Buyer.

The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.

33. **Severability.** If any provision of these Terms and Conditions, the Agreement or any Order is invalid or unenforceable, all other provisions of this Agreement shall remain in full force and effect.

34. **Security Interest.** Seller shall not have and waives, and shall not file or record, any document claiming any security interest or lien (including any statutory or common law lien upon any Buyer Property or the goods. Seller shall have no rights as a secured creditor under the Uniform Commercial Code and Seller shall not have the right to file any Uniform Commercial Code financing statements.