

Phillips & Johnston, Inc. Standard Terms and Conditions of Sale (Effective: February 12, 2020)

These Standard Terms and Conditions of Sale (“Terms”) apply to all quotations, acknowledgments, and/or invoices of Seller and to all related purchase orders, order releases, scheduling agreements and/or similar documents received by Seller for the purchase of Products (“Products”), and to all Products sold by Seller and all agreements for sale of Products by Seller to Buyer or owner made or documented whether verbally or in writing, or electronically, by a purchase order, special agreement or otherwise (“Agreement”). Orders accepted are accepted only at Seller’s General Office at Sand Springs, Oklahoma.

SELLER’S QUOTATIONS, SALES AND AGREEMENTS ARE EXPRESSLY MADE CONDITIONAL ON BUYER’S ASSENT TO THE TERMS CONTAINED HEREIN, WHICH REPRESENT THE SOLE AND EXCLUSIVE TERMS AND CONDITIONS UPON WHICH PHILLIPS & JOHNSTON, INC. (“SELLER”) OFFERS OR AGREES TO SELL PRODUCTS TO BUYER (“BUYER”). SELLER OBJECTS TO AND HEREBY REJECTS BUYER’S PROPOSED “CLICKWRAP” TERMS, IN WRITING, REGARDLESS OF WHETHER PROPOSED BEFORE OR AFTER THIS DOCUMENT. ANY QUOTATIONS, ACKNOWLEDGEMENTS OR OTHER DOCUMENTS, MATERIALS OR ANCILLARY DOCUMENTS SUBMITTED TO BUYER BY SELLER ELECTRONICALLY VIA BUYER’S WEBSITE OR BUYER’S ELECTRONICALLY PROCESSED COMMUNICATIONS, ARE SO SUBMITTED FOR THE BUYER’S CONVENIENCE AND ANY ELECTRONIC ACCEPTANCE OR “CLICKWRAP” TYPE PROCESS AS PART OF THAT COMMUNICATION IS SPECIFICALLY REJECTED BY SELLER. BUYER AGREES TO THAT REJECTION BY SELLER IF IT CONTINUES WITH THE TRANSACTION UNLESS BUYER SPECIFICALLY SEeks AND OBTAINS SELLER’S WRITTEN ASSENT TO SUCH PROPOSED CLICKWRAP TERMS IN EXPRESS COMMUNICATIONS AND CONSENT BY SELLER OUTSIDE THE BUYER’S ELECTRONICALLY PROCESSED COMMUNICATIONS.

For purposes of the transaction in the Agreement these Terms shall not be amended, modified or rescinded, and no amendment, modification or rescission of the Terms set forth herein will be binding upon Seller, unless such change is agreed to in writing, makes express reference to amending these Terms, and is signed by the President of Seller.

Prices: Unless otherwise provided on the face hereof and herein, prices quoted are not firm. Any prices quoted, unless otherwise specified are in effect for that business day only. Except as otherwise provided, all base prices, including but not limited to additional governmental levies (tariffs, duties, etc.) together with related extras and deductions, are subject to change without notice and all orders are accepted subject to prices in effect at the time of shipment. Blanket purchase orders are rejected and will be treated as scheduling agreements which are subject to price changes made at Seller’s discretion at the time specific orders or releases are made. Seller’s published prices, if any, are subject to change without notice. All prices are in United States Dollars. All transactions are subject to availability and priority sale. Quoted prices are based on current costs, including costs of steel or other purchased material, materials, processing, handling, and other charges. If the price of any component of any purchased component or raw material contained in the Products increases by greater than five percent (5%) or if any surcharge is assessed on such purchased component or raw material, then, in addition to the Product price, Buyer will pay such additional purchased component or raw material cost or surcharge effective as of the date such increase or surcharge is levied upon Seller. Unless otherwise expressly provided by Seller in the Agreement, prices do not include sales, excise, use, value-added or other similar taxes or duties now in effect or hereafter levied, insurance costs, transportation charges (such as freight, insurance, weighing or measuring, shipping, storage, packing, handling, demurrage or similar charges), engineering, engineering documentation, special handling, or testing or inspection charges, and other charges. Buyer shall pay all such charges. If an event Buyer requests changes to Products after the date of quotation, Seller may increase prices to cover all increased costs (plus reasonable overhead and profit) associated with such changes. Seller shall be under no obligation to honor such requested changes. Seller is not responsible for delays caused by Buyer.

Payment: Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Unless otherwise agreed, payment will be due net thirty (30) days after the date of shipment. Buyer shall not be entitled to deduct, counterclaim or set off against any amount owing to Seller. A failure to pay for an installment within the time for payment is an anticipatory material breach of all other installments agreed to by Buyer. Buyer will pay all court costs, attorney fees, and other costs incurred by Seller in collecting past-due amounts, including interest.

Credit: Seller may, at any time and in its sole discretion, limit or cancel (including suspension of production, shipment and/or delivery) the credit of Buyer or make requirements for payment as Seller deems necessary. It is Buyer’s duty to remain in good credit standing with Seller. Seller is not responsible for delays or interruption caused by restrictions or limitations placed on transactions due to Buyer’s credit standing or credit worthiness. Payment terms are subject to Seller’s determination of Buyer’s credit. All invoices past due will be assessed a finance charge at the rate of 18% per annum (1.5% per month), until invoice balances are paid-in-full. Buyer agrees to pay collection costs, including attorney’s fees, and to waive all rights to claim exceptions under state or federal law in the event that Seller collects any portion of the amounts due to Buyer. The Terms shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Buyer under the Agreement or these Terms shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time.

Adequate Assurance: Upon reasonable grounds for insecurity with respect to the performance of Buyer, Seller has the right to demand adequate assurance of due performance and may suspend any performance for which it has not received adequate assurance. Nothing herein shall impair the parties’ rights and remedies under the Uniform Commercial Code with regard to adequate assurance.

Packaging and Delivery: The Agreement shall be a shipment contract, and the Products shall be delivered EXW (Seller’s designated facility) Incoterms® 2020, unless otherwise provided in the Agreement. Seller shall use all reasonable efforts to comply with Buyer’s request as to method of transportation, but Seller reserves the right, if such method of transportation is not available, to use an alternate method of transportation, whether or not at a higher rate. In any such case, Seller shall notify Buyer of any such changes as reasonably promptly as possible. Seller determines date of shipment. Title to each shipment of the Products sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent delivers such shipment to a common carrier or trucker or to Buyer or Seller’s designated facility, but Seller shall be responsible for the cost of shipping to Seller’s rights of stoppage in transit, rights of reclamation and other legal rights of Seller. The common carrier or trucker consigned to Buyer or its agent is the agent of the Buyer and is responsible for adequately securing the Products for transit. Buyer, or its agent, is responsible for the securing of all loads of Products, as well as flagging or otherwise marking such for transport. Seller’s breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Products shall be identified, packaged and labeled in accordance with standard labeling of Seller. Special packaging or labeling shall be an additional charge to Buyer. Buyer assumes responsibility for compliance with all U.S. federal, state and local laws governing exports and re-exports from the United States in connection with the sale and use of Products, as well as all export and import duties, fees, permits, licenses, and other charges. In the event that Seller delivers any Products to Buyer, title of the Products delivered and risk of loss passes to Buyer when the Products depart Seller’s facility. If any Products should arrive at the Buyer’s destination in a damaged condition or should a shortage exist, the damage or shortage shall immediately be reported to the delivering carrier and the Seller. In case of damaged Products, a joint inspection of the loaded car, truck or barge shall be arranged with representatives of the carrier and Seller. Where the carrier’s equipment cannot be held for inspection, the Products shall be unloaded, protected and held for joint inspection. Before unloading, the alleged damage or shortage shall be photographed and be noted on the carrier’s delivery receipt and signed by the carrier’s agent. Any losses occasioned by shortage or damage in transit shall be collected by the account of Buyer.

Force Majeure: Neither party shall be liable in damages nor have the right to terminate the Agreement for any delay or default in providing hereunder if such delay or default is caused by conditions beyond its control, including, but not limited to Acts of God, unanticipated market events, governmental restrictions or mandates, including but not limited to health and pandemic related issues such as work restrictions and vaccination requirements, limitation or regulation, wars, labor or materials shortages, supplier or material provider breach of contract or refusal to deliver, equipment failure or outages, insurrections and/or any cause beyond the reasonable control of the party whose performance is affected. Further, the parties recognize that wild fluctuations in the cost of raw materials, and other factors, and that such fluctuations and other factors may affect the ability of Buyer, or its agent, to acknowledge the priority of maintaining continuous product flow and availability and that the continuous availability of product has such priority that in situations of fluctuation of price the contracted price may be changed by Seller in such circumstances. From time to time, Seller may, for the variety of reasons out of its control, find it necessary to impose unanticipated and extraordinary surcharges for raw materials, freight and fuel or other reasons and expenses due to extraordinary and unanticipated market events. Buyer agrees to pay these extraordinary charges and recognizes that said charges are extraordinary, unforeseen, impact the entire market and are unavoidable. The amounts of the surcharges will be set by Seller pursuant to the price increases and surcharges imposed by Seller’s suppliers at the time of the extraordinary activities and events.

Acceptance and Damage: Buyer shall accept any tender of Products which substantially conform to the description of the Products set forth in the Agreement. Seller’s standard test procedures conducted by Seller’s representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. Buyer shall be solely responsible for Product specification and design. Buyer shall be deemed to have PROVIDED Seller with and approved and accepted drawings, specifications, technical documentation, samples and prototypes of all Products. Unless Buyer gives Seller notice in writing stating with specificity all defects and non-conformities upon which Buyer relies to support rejection within thirty (30) days of delivery, the Product shall be deemed conforming and accepted. Failure to do so shall constitute an irrevocable acceptance by Buyer of the Products. **ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT TIMELY SPECIFIED ARE WAIVED.** If Buyer rejects any tender of the Products and if requested by Seller, Buyer shall return them to Seller, pursuant to Seller’s direction. In the case of Buyer acceptance of non-conforming Products, Buyer shall immediately notify Seller whether or not Buyer will continue to accept similarly non-conforming Products and failure to do so shall constitute a waiver by Buyer of specification requirements for said Products. In any event, if not already accepted as described in these Terms, when any Products shall have been altered from their original state, Buyer shall be deemed to have accepted such Products. Buyer’s acceptance of the Products terminates and irrevocably binds Buyer to the Agreement. Buyer shall be deemed to have accepted, and Buyer shall be limited to the remedies specifically provided in the Agreement and these Terms. In respect of items manufactured by Seller to Buyer’s requested, furnished, accepted or approved specifications or design or accepted by Buyer, Buyer shall defend and indemnify Seller, its successors, officers, directors and agents against, and hold them harmless from, any and all claims, losses or expenses (including attorney fees) arising or alleged to arise, in whole or in part, from the manufacture, sale, storage, processing or use of the Product(s), including but not limited to warranty, contract, statute, negligence (ordinary or gross), pollution and/or environmental damage, infringement, products liability (including but not limited to toxic tort) or other alleged tort or other negligence or testing or inspection charges, and other charges. Buyer shall defend and indemnify Seller, whether or not the Products have been rejected as defective or non-conforming or the Products have been accepted and a warranty claim has been made for correction of a defect or non-conformity. Seller may charge Buyer a restocking charge up to one hundred percent (100%) of the invoice price of returned Products. Returned Products must be returned to Seller in the original packaging and Buyer must first obtain a written consent from Seller to return the Products. Seller may offset the restocking charge against any amounts Seller owes to Buyer. It is expressly understood that any technical advice furnished by Seller with respect to the production or use of its Products is given without charge, and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer’s risk. Seller may generally waive the intended application of the Products but is not aware of, and has made no studies to determine specifications, requirements, standards, limitations, tolerances or safety factors for such applications. Seller is not an engineering firm. Seller is not aware of Buyer’s specific intended purpose, or the specifications required for the intended purpose, and makes no representation of fitness for use or purpose. See limitations and disclaimers, below. Any issues, concerns, specifications, or requirements for Buyer’s use of the Products is beyond Seller’s knowledge and Buyer agrees no reliance is given to any suggestion or advice given by Seller. Seller will manufacture the Products to the process specifications provided by Buyer, only, Buyer represents that it has consulted with or had an opportunity to consult with engineers and any such other expert or specialist and has satisfied itself that the specifications related to the Products ordered are satisfactory for its use. Seller has not provided with and has made no advice, recommendation or representation that the Products specified are adequate for the purpose Buyer intends.

Express Limited Warranties and Limitation of Remedies: SELLER WARRANTS THAT THE PRODUCTS WERE MANUFACTURED ACCORDING TO SPECIFICATIONS SET FORTH IN THE AGREEMENT. NO OTHER WARRANTY IS MADE AND, IN THE EVENT THE PRODUCTS FAIL TO CONFORM TO SPECIFICATIONS, SELLER WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE, EXPENSE OR OMISSION THEREON OR FOR ANY LOSS OR DAMAGE RESULTING FROM INDIRECTLY ARISING BECAUSE OF THE PRODUCTS OR THEIR USE, BUT WILL BE LIABLE ONLY FOR THE REPAIR OR REPLACEMENT OF THE PRODUCTS AT SELLER’S SOLE OPTION OR AT SELLER’S SOLE OPTION, REIMBURSEMENT TO BUYER OF THE PURCHASE PRICE AGAINST RETURN OF THE PRODUCTS, THESE REMEDIES ARE THE SOLE AND EXCLUSIVE REMEDIES. ANY CLAIM THAT PRODUCTS FAIL TO CONFORM TO SPECIFICATIONS SHALL BE DEEMED WAIVED BY BUYER UNLESS MADE IN WRITING WITHIN THIRTY (30) DAYS FROM THE DATE OF RECEIPT OF THE PRODUCTS.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, ALL SALES ARE, “AS IS”, AND “WITH ALL FAULTS.”

IF BUYER IS NOT THE END USER OF THE PRODUCTS, IT SHALL TAKE STEPS TO ADVISE THE END USER OF THE DISCLAIMERS AND LIMITATIONS CONTAINED IN THESE TERMS. Unless specifically provided in the Agreement, Seller has furnished no instructions on use or performance criteria. Unless specified in the Agreement, Buyer uses the Product at its own risk and according to its own performance criteria and limitations. This warranty may not be expanded or modified in any way except in writing by the President of Seller.

Limitation of Warranties and Liability: Disclaimer of Implied Warranties: THE LIMITED EXPRESS WARRANTIES IN THESE TERMS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER’S DISCLAIMERS ALL IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF (THE AGREEMENT AND THESE TERMS).

All descriptions, shipping specifications and illustrations of the Products in catalogues, brochures and price lists otherwise provided by Seller and not expressly and specifically incorporated in the Agreement were and are for general guidance only, and Seller is not responsible for any errors or omissions therein or for any loss or damage resulting from indirect reliance thereon. Seller does not warrant that it or the Products are in compliance with any industry standards, guidelines, or procedures, or with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction unless otherwise specifically provided in the Agreement. Buyer affirms that it has not relied upon Seller’s list or judgment to select or furnish Products for any particular purpose beyond the specific express warranties in this Agreement. Seller has no continuing or future obligation to produce, maintain inventory or retain the technology or ability to produce any Products sold.

NOTWITHSTANDING ANYTHING SET FORTH IN THE AGREEMENT AND THESE TERMS, AND TO THE EXTENT PERMITTED BY LAW, SELLER SHALL BE LIABLE FOR ANY LOSS OF REVENUE OR ANTICIPATED PROFITS, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT OR PUNITIVE DAMAGES IN CONNECTION WITH ANY BREACH OF WARRANTY OR OTHER BREACH OF SELLER’S OBLIGATIONS UNDER THE AGREEMENT AND THESE TERMS OR ANY OTHER CLAIM (IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE PRODUCTS. SELLER’S AGGREGATE LIABILITY FOR ANY DAMAGES OR CLAIMS ARISING OUT OF OR RELATING TO ANY PRODUCTS SHALL IN NO EVENT EXCEED THE AMOUNT BUYER PAID FOR THE SPECIFIC PRODUCT(S) GIVING RISE TO THE CLAIM OR DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, and waives any right to claim or recover any amount in excess of the amount of the purchase price of the contractual or common law indemnity against Seller for any claim, including, but not limited to, liability for claims for damages to person or property arising out of the use of Products sold to Buyer under the Agreement and these Terms. The replacement or repair of Products by the Seller does not give rise to any new warranty except the warranty period provided for herein shall be extended by the length of any period in which defective or non-conforming Products are in possession of Seller. The Agreement and these Terms are only for the benefit of the parties, except that all disclaimers and limitations applicable to Seller and all indemnification to which Seller is entitled shall be also for the benefit of Seller’s parent, subsidiary and affiliate companies (and their respective officers, directors, employees, agents, contractors and suppliers) and effective against any and all uses of the Products. If any other provision of the Agreement or these Terms are determined to apply to other parties, all other provisions including limitations, waivers and disclaimers shall also apply.

Certification: Seller certifies that any Products produced in the United States shall be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the United States Fair Labor Standards Act, as amended, and of the regulations and orders of the United States Department of Labor issued under Section 14 thereof. No other certifications or waivers regarding payments to Seller’s suppliers or laborers are required.

Claims and Arbitration: Any proceeding for breach of the Agreement or these Terms or any other right arising from or in connection with the Agreement or these Terms cannot be filed, maintained, unless (i) the parties have participated in good faith in a mediation session to attempt to resolve the dispute, (ii) it is commenced within one (1) year after the cause of action has accrued, (iii) Buyer has given timely written notice to Seller of its claim as provided herein, and (iv) Buyer deposits any unpaid portion of the purchase price for Products with the tribunal (or interpleads into a local court jurisdiction pending the tribunal’s decision if the tribunal is incapable of holding such funds) pending final adjudication. An action shall be deemed to have accrued no later than delivery of the Products.

With the exception of a collection action for payment due Seller under the Agreement, any controversy or claim arising out of or relating to the Agreement or these Terms, or the breach thereof, shall be resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in Tulsa, Oklahoma, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction therefor. Costs (including the fees of the American Arbitration Association and the costs and expenses of the arbitrator) shall be divided equally between the parties. Attorney’s fees are not awardable to the prevailing party in such proceedings and each party shall bear its own attorney’s fees and costs. Such limitation on recovery of costs and attorney’s fees expressed herein is the agreement of the Buyer and Seller and shall prevail even if recovery to the prevailing party might otherwise be allowed under the applicable law. The limitation on recovery of costs and attorney’s fees shall not apply to claims, disputes and matters as described in the arbitration clause of this paragraph. Arbitration decisions shall be made by a panel of three (3) arbitrators and shall be a reasoned award.

Non-solicitation: During the performance of the Agreement and for a period of twenty-four (24) months after its final completion, Buyer shall not, directly or indirectly: (i) contact, recruit, solicit or induce, or attempt to contact, solicit, recruit or induce, any employee, consultant, agent, director or officer of the Seller to terminate his/her employment with, or otherwise cease any relationship with Seller; (ii) contact, solicit, direct, take away, or attempt to contact, solicit, divert or take away, any clients, customers, vendors or accounts of Seller; or (iii) use its knowledge of Seller’s clients, customers, vendors or employees or any confidential information about Seller, its employees, agents or contractors to solicit, divert, take away or otherwise induce any clients, customers, vendors or accounts of Seller to terminate their relationship with Seller or to enter into a business with, negotiate or make agreements or terms with them or communicate with them to the Seller’s detriment.

Applicable Law, Jurisdiction and Venue: The Agreement and these Terms and all ancillary services or sales shall be governed, construed and enforced under the law of the State of Oklahoma including the Uniform Commercial Code in force on the initial date of the Agreement (the “UCC”), without regard to its conflict of law rules and except as provided herein. The U.N. Convention on the International Sale of Goods shall not apply. State courts in Tulsa County, Oklahoma and federal courts in the Northern District of Oklahoma shall have exclusive jurisdiction over the parties and the claims arising under the Agreement and these Terms, subject to any arbitration provisions contained herein.

Export Controls: Buyer acknowledges that the Products and any related services are subject to U.S. export controls and economic sanctions laws and regulations, including the International Traffic in Arms Regulations (“ITAR”), the Export Administration Regulations (“EAR”), and regulations promulgated by the U.S. Department of the Treasury Office of Foreign Assets Control (“OFAC”). Seller does not and is not eligible to comply with the Customs-Trade Partnership Against Terrorism (“CTPAT”). Buyer further acknowledges that the export, reexport, transfer, sale or supply of Products and any related services to or in a third country or to, by, or for a different end user or end use may require a license or other authorization from the Government of the United States. Such licenses or other authorizations may impose further restrictions on the export, reexport, transfer, retransfer, sale or supply of Products and any related services. Buyer shall be responsible for obtaining any license or other authorization, retransfer, sale, or supply of U.S.-origin goods, technology or services to countries or persons subject to U.S. sanctions or embargoes. Buyer agrees to comply with all applicable U.S. export control and economic sanctions laws and regulations. It is the sole responsibility of the Buyer to apply for and obtain any necessary licenses or other authorizations prior to any export, reexport, transfer, retransfer, sale, or supply of Products and any related services. Seller makes no warranty that any such licenses or other authorizations will be granted, and shall have no liability for Buyer’s inability to obtain such licenses or other authorization or for any violation by Buyer of any applicable export control and/or economic sanctions laws and regulations.

Confidentiality: Unless otherwise specified, all information disclosed by Buyer to Seller is confidential and shall be subject to Buyer’s patent rights, without any other restrictions on Seller’s use including reproduction, modification, disclosure or distribution of the information. Buyer agrees not to label any such information with a notice asserting that the information is proprietary or confidential to Buyer.

Buyer shall consider and treat all information furnished by Seller and relating to the Agreement as confidential and shall not disclose any information to any other person or use any information itself for any purpose other than pursuant to and as required by this Agreement, without Seller’s prior written consent. Seller retains all rights with respect to the information, and Buyer shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights in respect of the information. Buyer shall not allow any information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or goods furnished to others, without Seller’s prior written consent. Any invention or other information, whether patentable or not, developed by Seller in the performance of the Agreement shall remain the property of Seller.

Cyber Security: Buyer warrants and represents that it will maintain adequate administrative, technical, and physical measures, controls, tools, systems, policies and procedures in accordance with good cyber security industry practice. Buyer will notify Seller, in writing, of any security incident affecting or which may affect any IT infrastructure or data or facilities owned, leased, or used by Buyer, which may affect Seller’s obligations under this Agreement, or any security incident or data or facilities which may affect any data or IT infrastructure, which may affect Seller’s obligations under this Agreement. Seller shall not be liable for any delay or in an event, within 72 hours after the Buyer becomes aware of or suspects that a security incident has occurred that is expected to affect performance under this Agreement. Such notification will be made first in writing and immediately followed up by telephone to Seller’s Chief Financial Officer or the relationship manager. Buyer will defend, indemnify, and hold Seller, its successors, officers, directors and agents against, and hold them harmless from and against any and all claims, suits, causes of action, liability, loss, costs and damages, including reasonable attorney fees, arising out of or relating to any claims arising from a breach by Buyer of its obligations contained in this Section.

Buyer Ownership: Buyer’s ownership of its controlling interest in the ownership of Buyer is sold or otherwise transferred during the term of the Agreement. Buyer shall disclose such transfer and Seller shall have the right to cancel the Agreement immediately.

Merger: The Agreement and the Terms contained herein constitute the entire and exclusive agreement of the parties. The Agreement and these Terms form a binding contract and cannot be cancelled for convenience or any other reason without the mutual consent of both Buyer and Seller. Buyer remains obligated for the cost of all raw materials and components purchased by Seller for the manufacture of the Products requested by Buyer hereunder, regardless whether the Products are manufactured or not, and is responsible to take the Products unless otherwise agreed to in writing. No oral or written prior or contemporaneous agreements or representations were made or relied upon by the parties. The Agreement and these Terms may be modified or amended as provided herein. Seller’s Terms may be amended from time to time for future agreements. The latest version of the Terms are available at Seller’s website. Any quotations, orders, confirmations, acknowledgments made via e-mail or on the website are subject to the Terms then posted thereon.

Assignment: The Agreement shall not be assigned by either party without the written consent of both parties.

Notices: Notices made under the Agreement shall be made by electronic means and are effective only upon acknowledgment of receipt.

No Audit: Buyer does not have the right to audit Seller’s locations, books, or records relating to the Agreement or these Terms.

Solvency: If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect.

Construction: The parties agree that the usual rules of contract construction construing ambiguities against the drafter will not apply as the parties are of equal sophistication and bargaining power. Thus, all terms will be given their plain meaning.