



**Articles of Terms and Conditions**

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**1. Application.** The terms and conditions set forth in these Terms and Conditions of Purchase ("Terms and Conditions") apply to all purchases of Goods and/or Services (as defined below) by Buyer and to the delivery or all Goods and/or Services to Buyer.

**2. Definitions.** The terms below shall have the definitions stated below for purposes of these Terms and Conditions .

- "Agreement" means the terms and conditions set forth in the Terms and Conditions and in the Purchase Order. The Agreement constitutes the sole and entire agreement of the parties with respect to the Purchase Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Purchase Order. This Agreement applies equally to any repaired or replacement Goods and/or Services provided by Seller hereunder.
- "Buyer" means the MAC entity identified on the Purchase Order which is purchasing, receiving, or distributing the Goods and/or Services identified on the Purchase Order.
- "Customer" means the party or parties who will purchase goods and/or services from Buyer that incorporate or include the Goods and/or Services.
- "Goods" has the meaning assigned in the Uniform Commercial Code and, for purposes of these Terms, includes all parts, systems, components, or raw materials that Buyer orders and Seller supplies to Buyer (including items Seller obtains from third parties).
- "MAC" means MAC Trailer Enterprises, Inc. and its North America divisions and affiliates.
- "Indemnified Parties" means MAC Trailer Enterprises, Inc. and its divisions, parents, subsidiaries, affiliates, and Customers, and each of their respective officers, directors, shareholders, members, managers, employees, agents, representatives, successors, and assigns.
- "Purchase Order" means a document in paper or electronic form issued by Buyer to Seller for the purchase of Goods and/or Services, together with any and all releases against the Purchase Order, and the following, if transmitted with, attached to, or referenced in the Purchase Order: cover sheet, separate agreements between Buyer and Seller, warranty agreements between Buyer and Seller, specifications, drawings, exhibits, and schedules. If the Purchase Order is issued as a blanket purchase, the total blanket purchase quantity is an estimated volume and not a commitment to purchase, and Seller and Buyer will only be obligated with respect to the specific quantity(ies) and delivery date(s) identified in the written release(s) issued by Buyer against the Purchase Order.
- "Seller" means the party identified on the Purchase Order that is agreeing to supply Goods and/or Services to Buyer.
- "Services" means any work performed by or to be performed by Seller or Seller's employees, agents, representatives, or permitted subcontractors, such as, but not limited to, design, engineering, manufacturing, assembling, packing, distribution, or other operations or services identified in the Purchase Order. If the Purchase Order contains consulting or engineering services and/or any work made for hire projects (including but not limited to writing, providing, or customizing software code), Buyer may require Seller to sign a separate document incorporating additional applicable terms.
- "Supplier Portal" means the website maintained by MAC Trailer Enterprises, Inc. which is accessible to Seller with no required password at <https://www.mactrailer.com>
- "Terms and Conditions" means the terms and conditions included in this document, in the Purchase Order, and published on the Supplier Portal.

**3. Acceptance; Buyer's Form Controls.** Seller acknowledges that it has read and understands these Terms and Conditions. Seller agrees that Seller's written acceptance, shipment of Goods or commencement of any Services under a Purchase Order, or receipt of any payment from Buyer relating to a Purchase Order, will constitute Seller's acceptance of the terms of the Agreement, including these Terms and Conditions. A Purchase Order constitutes an offer by Buyer to purchase the Goods and/or Services specified in the Purchase Order, at the quantity(ies), price(s), and delivery date(s) stated in the Purchase Order, and subject to

the Terms and Conditions. No Purchase Order will be deemed an acceptance of any prior offer by Seller to sell and Goods and/or Services. Any terms and conditions proposed by Seller in any proposal, quotation, acknowledgment, invoice, delivery receipt or other Seller form, which are different from or in addition to these Terms and Conditions or the terms set forth in the Purchase Order are unacceptable to Buyer and are expressly objected to and rejected by Buyer, and no such terms will be a part of the Agreement. Buyer's act of accepting or paying for any shipment of Goods or completed Services does not constitute acceptance of any of Seller's terms or conditions.

#### **4. Warranty.**

(A) Seller warrants that the Goods will:

- (i) be free from all defects in design, manufacture, workmanship and material;
- (ii) conform in all respects with samples supplied by Seller and conform to all descriptions, specifications, drawings, data and samples specified, provided, or referred to by Buyer;
- (iii) be new and of the best quality and merchantable, safe, and fit for their intended purpose;
- (iv) be free and clear of all liens, security interests, or other encumbrances;
- (v) conform to any statements made on the container, labels, or in advertisements;
- (vi) conform to any applicable quality manual, standards, procedures, and requirements furnished by Buyer or Customer;
- (vii) be adequately contained, packaged, marked and labeled;
- (viii) comply with national and industry codes and standards;
- (ix) not infringe or misappropriate any third party's patent or other intellectual property rights; and
- (x) in the case of software, not contain or include a virus, malware, freeware, shareware, keystroke logger, secretive monitoring or access spy system, or any program or subroutine that places restrictions on Buyer's ability to use and freely transfer.

Seller warrants that the Goods will meet performance requirements including length of service and mileage warranties and that, when applicable, all facilities where the Goods are produced are currently certified and will remain certified during the term of the Purchase Order under IATF16949/ISO9001:2015, TS16949, ISO9000, and any other applicable standard specified in the Purchase Order or otherwise communicated by Buyer to Seller, unless exempted in accordance with Buyer's procedures and confirmed in writing by Buyer.

Without limiting the preceding paragraph, Buyer may, in accordance with IATF16949/ISO9001:2015, communicate to Seller certain requirements including, without limitation, applicable statutory and regulatory requirements and/or special product and process characteristics to be observed, adhered to, or performed by Seller in the course of Seller providing the Goods or Services. Seller shall promptly communicate all such requirements, as applicable, to Seller's suppliers and permitted subcontractors who are contributing to the Goods or performing any part of the Services. Seller shall also include in its agreements with its suppliers and permitted subcontractors a paragraph that is substantially the same as this paragraph so that Seller's suppliers and permitted subcontractors will be similarly bound to communicate all requirements to their respective suppliers and subcontractors, and so on. Buyer is deemed to be a third-party beneficiary of such provisions.

(B) The warranty period for all warranties set forth in this Article, except warranties as to liens, title, and latent defects, or unless otherwise specified in the Purchase Order, will be twenty-four (24) months from the date of delivery to a Customer. With respect to warranties as to liens, title, and latent defects, the warranty period will be the useful or expected life of the Goods as determined by Buyer. If, at any time prior to the expiration of the warranty period, it appears that the Goods or any part thereof do not conform to the warranties set forth in this Article, Seller will, at Buyer's option and at Seller's sole cost and expense, promptly repair or replace the Goods to Buyer's satisfaction at the delivery point specified by Buyer. If the Goods are replaced or repaired, the warranty period for the Goods will be suspended from the date Seller receives notice of the warranty claim until the date the Goods are replaced or repaired to Buyer's satisfaction.

(C) Seller's liability for breach of any warranty will extend to any services, operations or labor, and the repair or replacement of all or any part of any Goods covered by the Purchase Order, and will include all damages proximately caused by the breach of any of the foregoing warranties, including but not limited to, all costs arising out of disassembly, removal, re-inspection, re-installation, re-testing, transportation, warehousing, and delivery of repaired or replacement Goods. Any action on the part of Buyer or Customer under this Article will not relieve Seller of any responsibility or liability with respect to such Goods.

(D) If Seller provides Services to Buyer, Seller warrants that all Services and all Goods, parts, and components supplied or utilized in the Services will meet the terms described in (A), (B) and (C) above. Seller further warrants that the Services will conform to descriptions, specifications, drawings, and data presented by Seller and accepted in writing by Buyer. In all Services, Seller will employ good, sound procedures, skill, care and judgment. All Services will be performed in accordance with all local, state, and national laws, regulations, codes, and standards applicable to such Services. In addition, if any Services are to be performed on Buyer's premises, Seller and their employees, agents, representatives and subcontractors will fully comply with all Buyer's site policies, practices and rules.

(E) The warranties described in (A), (B), (C), and (D) above will be in addition to any warranties, express or implied, extended to Buyer by Seller, and in the event of any default under or breach of this warranty or any other provision of the Purchase Order by Seller, Buyer will be entitled to all damages, including incidental, special, indirect, and consequential damages. Seller agrees that all aforesaid warranties will survive delivery, inspection, acceptance, and payment of or for the Goods and Services and will run to Buyer and to Customer and their dealers, customers and users of the Goods and Services.

**5. Inspection.** All Goods (including but not limited to raw materials, work in process and finished products, wherever located, including at Seller's suppliers' shops) will be subject to inspection and testing by Buyer or Customer or their designee at all times through the manufacturing process and for a reasonable time after arrival at the final destination. Buyer and Customer will be entitled, after prior notice to Seller, to take samples and carry out any other necessary investigations and tests with respect to the manufacture of Goods for Buyer and Customer. Any inspection of the Goods during manufacture or prior to delivery shall not constitute acceptance of any work-in-process or the finished Goods. Final inspection and acceptance will be at Buyer's premises or at a designated Customer location. Buyer may, at its sole option, reject all or any portion of the Goods which it (or its Customer) determines are nonconforming or defective. Defective or nonconforming Goods will be held at Seller's risk, and, if Seller so requests, may be returned at Seller's expense. Payment for Goods prior to final inspection will not constitute acceptance of the Goods, nor constitute a waiver of Buyer's rights. Returned Goods will be deducted from total shipments, and Buyer will be entitled to full reimbursement or credit for returned Goods. With respect to any defective or nonconforming Goods, Buyer may:

- (i) remedy such nonconformity by itself or through others, in which event Seller will be responsible for and shall reimburse Buyer for the reasonable costs and expenses incurred by Buyer;
- (ii) retain the nonconforming Goods and equitably reduce the Price to reflect the diminished value;
- (iii) reject or revoke acceptance of the Goods and cover by making any reasonable purchase of Goods in substitution, in which event Seller will be liable for and shall pay all cover costs; or
- (iv) reject or revoke acceptance of the Goods, and demand prompt refund of the Price in full, in which event Seller will promptly issue any applicable refund and Seller will also be liable for any and all costs incurred by Buyer including, but not limited to, costs incurred to transport the nonconforming Goods to and from the delivery point.

**6. Delivery.** Seller shall deliver the Goods and Services in accordance with the delivery terms set forth on the Purchase Order. All Goods shall be delivered to the address specified in the Purchase Order, during normal business hours unless otherwise instructed in writing by Buyer. Upon Buyer's request, Seller shall promptly provide to Buyer all shipping documents including the invoice, packing list, bill of lading and any other documents necessary to release the Goods to Buyer. Timely delivery of the Goods and Services is of the essence, and Seller shall not give any other customer of Seller priority over Buyer in the allocation of Seller's production or delivery of the Goods and Services. If any Goods or Services are not delivered by the Due Date specified in the Purchase Order (or, if no Due Date is specified, then within a reasonable time not to exceed thirty (30) days after the date of the Purchase Order), Buyer may elect to:

- (i) refuse to accept such Goods and/or Services and terminate the Purchase Order at no cost to Buyer;
- (ii) cause Seller to ship the Goods by the most expeditious means of transportation, in which event Seller will be responsible for and shall pay any and all transportation costs or charges in excess of those which would have applied for the means of transportation specified in the Purchase Order; or
- (iii) accept the Goods and/or Services.

In all events, Seller will be liable for and shall indemnify Buyer against any and all losses, claims, damages, and reasonable costs and expenses, including incidental, indirect, consequential and special damages, caused by or attributable to Seller's failure to timely deliver the Goods and Services.

**7. Title; Risk of Loss.** If Buyer makes progress payments to Seller under the Purchase Order, title to the Goods will pass to Buyer at the time that Seller identifies the Goods to the Purchase Order; otherwise, title to the Goods and all components thereof will pass to Buyer upon the earlier of Buyer's payment for the Goods or inspection and acceptance of Goods at the delivery location specified in the Purchase Order. Notwithstanding anything to the contrary in the Agreement, Seller will bear all risk of loss of the Goods until the Goods are received, inspected, and accepted by Buyer or the Customer at the delivery destination specified in the Purchase Order.

**8. Pricing and Payment.** The price of the Goods or Services is the price stated in the Order (the "Price"). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the specified delivery location, insurance, customs duties and fees, and applicable taxes. Unless otherwise set forth on the face of the Purchase Order, Seller shall issue an invoice to Buyer upon or after delivery and only in accordance with the Terms and Conditions. No increase in the Price will be effective, whether due to increased material, labor, or transportation costs or otherwise, without Buyer's prior written consent (in Buyer's sole and absolute discretion). Unless otherwise set forth on the face of the Purchase Order, terms of payment for all properly invoiced amounts will be thirty (30) days from the date of invoice. If Seller obtains any reduction, refund, rebate, reduction, or drawback of any freight rates, customs duties (including antidumping and countervailing duties), import taxes, excise taxes, and/or sales taxes from those in force on the date hereof, the Price shall be reduced or refunded to Buyer in like amount. Without prejudice to any other right or remedy it may have, Buyer may withhold or set off any amount owing to it against any payment due under any Purchase Order between Buyer and Seller. If Seller's invoice is not received by Buyer within one-hundred fifty (150) days of shipment of the Goods, or within one-hundred fifty (150) days of completion of the Services, as applicable, then Seller waives all claims against Buyer for payment for such Goods or Services.

**9. Changes.** Buyer reserves the right to change any specifications, drawings, and other requirements for the Goods and Services upon reasonable notice to Seller. If Seller thinks that any such change will affect the Price or Due Date for such Goods or Services, Seller must promptly (not later than 5 calendar days after notice of the change) notify Buyer in writing, including reasonable supporting documentation. Buyer and Seller will attempt to mutually agree on any supported equitable adjustments to Price and/or delivery resulting from such changes will modify the Purchase Order in writing to reflect any mutually agreed changes. Any claim by Seller for adjustment will be deemed waived and denied unless submitted to Buyer within said 5 calendar day period. Any price increases or extensions of the Due Date proposed by Seller will not be binding on Buyer unless set forth in a writing issued and signed by an authorized representative of Buyer and accepted by Seller. If Seller and Buyer fail to mutually agree on an equitable adjustment for the change, such failure will in no way affect Seller's responsibility to comply with and perform the terms of the

Order. Seller will provide Buyer not less than one hundred eighty (180) days' written notice before any proposed change in Seller's manufacturing location, manufacturing or quality processes, or form, fit, or function of a Good, and Seller will not implement any such change unless Buyer expressly agrees to such change in a writing signed by an authorized Buyer representative.

**10. Termination.** In addition to any other remedies provided in the Agreement, Buyer may terminate any Purchase Order with immediate effect upon written notice to Seller, either before or after the acceptance of Goods or Services, if Buyer determines that Seller has not performed or complied with any or all of these Terms and Conditions. Buyer may terminate any Purchase Order, in whole or in part, or suspend, delay or interrupt all or any part of the Goods and/or Services, for any reason or no reason, with or without cause, by written notice to Seller or by oral notice to Seller that is confirmed in writing within thirty (30) days. If Seller becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then Buyer may terminate any Purchase Order upon written notice to Seller. If Buyer terminates any Purchase Order (or part thereof), Seller's sole and exclusive remedy will be Buyer's payment to Seller for any completed Services and for Goods delivered or in transit prior to termination and accepted by Buyer. Buyer's liability shall in no event exceed the Price. If Buyer suspends, delays, or interrupts the delivery of the Goods and/or Services, and if Buyer later authorizes Seller to resume delivery of the Goods or Services, the Price may be subject to equitable adjustment of not more than ten percent (10%) of the price of such Goods and/or Services, and the completion and delivery schedule may be equitably adjusted, but in either case only to the extent that Buyer was the direct cause of the suspension, delay, or interruption. **IN NO EVENT WILL BUYER BE LIABLE TO SELLER FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OVERHEAD OR OTHER DIRECT OR INDIRECT COSTS, UNAMORTIZED DEPRECIATION, LOSS OF USE, OR LOST PROFITS OR REVENUE ARISING OUT OF OR RELATED TO ANY PURCHASE ORDER.**

**11. Confidential Information.** Seller acknowledges that it may gain access to or knowledge of confidential or proprietary information of Buyer or Customers including, but not limited to, plans, financial information, designs, data, ideas, drawings, specifications, formulas, trade secrets, product information, processes, equipment, know-how, technical documentation, marketing information, databases, and customers or suppliers, and other valuable, confidential, and proprietary information (collectively "Confidential Information"). At all times after disclosure thereof, Seller will keep all Confidential Information confidential, including its business relationship with Buyer and the terms of the Agreement, and Seller agrees not to disclose any such information to any others except as expressly authorized by Buyer, in advance, in a writing signed by an authorized representative of Buyer. Seller acknowledges and agrees that all Confidential Information shall be and remain Buyer's sole and exclusive property, without limitation or restriction on Buyer's use or transferability, and Seller obtains no license or right thereto.

Without limiting the foregoing, Seller expressly agrees that all patterns, dies or other tools, jigs, fixtures, forms, electronic control devices, software, firmware, programs, algorithms and the like in whatever medium, and any other devices and specifications or drawings furnished or paid for by Buyer shall be part of Seller's Confidential Information and will:

- (i) be safely stored, maintained, and held at Seller's risk and insured at Seller's expense;
- (ii) wherever possible be clearly marked as the property of Buyer;
- (iii) be used only in the performance of Purchase Orders issued by Buyer; and
- (iv) together with all copies thereof, be delivered to Buyer or destroyed by Seller, upon Buyer's request and as Buyer specifies.

Seller may not use any Confidential Information for the production and/or supply of any goods or services to any other party. If Buyer compensates Seller for development or design work initiated by Buyer for Goods or Services, any intellectual property rights including, but not limited to, inventions, discoveries, techniques and processes, arising from such work will accrue to Buyer, and Seller hereby assigns to Buyer all of Seller's right, title, and interest in and to such intellectual property. Neither the supply of Goods nor the performance of Services under a Purchase Order grants any intellectual property rights in any Confidential Information to Seller, other than the limited right to use such information to supply Goods or perform Services pursuant to and in accordance with the Agreement. Seller acknowledges and agrees that any sale of Goods bearing the Buyer's or Customer's trade name and/or trademarks to anyone other than Buyer would infringe the Buyer's or Customer's proprietary rights in its trade name and/or trademarks. Seller hereby agrees that if Seller breaches this section, Buyer will incur irreparable injury and harm and that money damages would be an insufficient remedy, and, as such, and in addition to all other remedies, Buyer shall be entitled to seek injunctive relief restraining Seller from further breach of this Article. Seller grants to Buyer a non-exclusive, worldwide right and license under the intellectual property rights of Seller (including but not limited to, patents (either utility or design), copyrights, mask work rights, Confidential Information (including but not limited to, trade secrets, software, firmware and know how), to make, have made, use, import, market, sell, transfer, repair or reconstruct any Goods or Services which are the subject matter of the Purchase Order, together with the right to sublicense others to do so for Buyer. Seller grants such license provided that Buyer agrees to only exercise this license if Seller is in default of any Purchase Order or if Seller terminates a Purchase Order for any reason other than Buyer's material default, and that when exercised, such license will be fully paid-up and no royalty due to Seller. Should Buyer's exercise of said license be judicially determined to be without justification, then Seller's damages will be limited to a reasonable royalty for any products produced by or for Buyer under such license, less any damages caused by Seller's conduct.

**12. Taxes and Duties.** The Price includes all federal, state, and local taxes from which Seller cannot obtain exemption. The amount of all non-exempted taxes will be stated separately on Seller's invoice. Any additional or increased tax, public charge, freight rate, tariff, or duty levied on or imposed upon the Goods and/or Services or the manufacture or sale thereof after the date of a Purchase Order will be paid by Seller. Any reduction in Seller's cost resulting from a reduction in any tax, public charge, freight rate, tariff, or duty from that in force on the date of the Purchase Order will reduce the price for the Goods and/or Services ordered in a like amount. Seller will cooperate with Buyer and Customer in obtaining any such credits. Seller will provide Buyer and its designees with documentation establishing the country of origin and value of the Goods as Buyer or Customer may request, including, as applicable, affidavits of manufacture and an accurate and complete certificate of origin.

**13. Compliance with Laws; Buyer's Right to Audit.** Seller hereby certifies and agrees that Seller and Seller's Goods and/or Services will comply with all state, federal, and local laws, rules, regulations, directives, ordinances, executive orders and statutes

applicable to the country or countries of manufacture, sale, purchase and use (collectively, "Laws"). The Laws include, but are not limited to, Federal Motor Vehicle Safety Standards and regulations issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 and any amendments thereto, Occupational Safety and Health Act, International Traffic in Arms Regulations and the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, Environmental Protection Act, Toxic Substances Control Act, Fair Labor Standards Act, and Laws that require affirmative action and prohibit discrimination, the U.S. Foreign Corrupt Practices Act, and any applicable anti-bribery Laws of other countries, all as amended. If the export or use of Seller's Goods and/or Services outside of the United States of America can be considered restricted because of national export or other regulations, Seller must inform Buyer in writing, immediately upon receipt of an applicable Purchase Order, of such fact and of the consequences of the restrictions. Seller must also inform Buyer of any changes in export regulations covering Seller's Goods and/or Services promptly upon Seller's notice thereof. Seller represents and warrants that it will not provide to Buyer any Goods or components of Goods that contain conflict minerals as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Upon Buyer's request, Seller will grant Buyer and its authorized representatives, accountants, advisers, and attorneys (and Seller will obtain a similar right from any permitted subcontractors) access to all of Seller's (at its subcontractors') books and records relating to Seller's compliance with this Article, wherever such books and records are maintained in the normal course of business. Buyer will initially bear the cost of such audit, but if the audit reveals a material non-compliance by Seller, then Seller will bear the full cost of the audit. Buyer will conduct the audit during Seller's regular business hours and upon at least five (5) business days prior notice.

#### **14. Seller Indemnification.**

(A) Seller will indemnify, defend, and hold the Indemnified Parties harmless from any and all actions, claims, demands, suits, liabilities, losses, obligations, damages (including but not limited to actual, incidental, indirect, special or consequential damages), judgments, settlements, deficiencies, awards, penalties, fines, costs and other expenses (including reasonable professional and attorneys' fees and including the cost of enforcing any right to indemnification hereunder), which relate to, or arise out of, or occur in connection with:

- (i) any actions or inactions of Seller, its employees, representatives, agents, contractors, and/or subcontractors, relating to the Goods and Services;
- (ii) Seller's breach of any representations, warranties, or obligations;
- (iii) any claim or finding that the Goods and/or Services caused or contributed to death, bodily injury, illness, or personal injury of any person or damage to property, including loss of use;
- (iv) direct or contributory infringement of, or inducement to infringe, any patent, trademark, copyright, trade secret or other proprietary right by reason of the manufacture, use, or sale of the Goods or Services, or for actual or alleged misuse or misappropriation of a trade secret by Seller or its employees, representatives, agents, contractors, and/or subcontractors;
- (v) Seller's failure to comply with or observe any Laws;
- (vi) any claims by third parties sounding in product liability, tort, contract, or otherwise relating to the Goods or Services; and
- (vii) the inaccuracy or invalidity of, or defect in, any certificate of origin furnished by Seller to Buyer.

(B) If any Goods or Services create, cause, or contribute to a vehicle or other product repair campaign or recall, Seller will indemnify the Indemnified Parties as described in (A) above, and without limiting the foregoing, Seller agrees that it will pay all costs of recall, repair, and correction, including but not limited to, labor, administrative costs, internal costs, reasonable attorneys' fees and expenses, and any actual, incidental, indirect, special and consequential damages including loss of use incurred by Indemnified Parties and their dealers and users of the Goods and Services. Seller's indemnification obligations set forth in this Article shall apply regardless of whether any act, error, omission, or negligence of Buyer or Customer contributed thereto. The remedies provided in this paragraph will be cumulative and will not limit Seller's liability.

**15. Seller Insurance.** Seller shall maintain Commercial General Liability insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury, property damage and personal injury, protecting the Indemnified Parties against claims of bodily injury, including death, personal injury, and property damage, including loss of use, arising out of or attributed or related to the Goods and/or Services. The Commercial General Liability insurance will provide coverage including but not limited to products liability, contractual, completed operations, broad form property damage, and personal and advertising injury, and it shall expressly cover Seller's contractual liability under Article 14. Where necessary to obtain coverage by policy endorsement or a separate policy insuring a required risk, Seller will do so at its expense. The Commercial General Liability Insurance will not include any express exclusion for Pollution arising out of the products/completed operations hazard. If the Services include any professional services, Seller shall maintain Commercial General Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence. If any Services are to be performed on Buyer's premises, Seller will maintain the following minimum insurance covers in addition to those referenced above:

- (i) workers' compensation insurance meeting statutory requirements;
- (ii) employer's liability insurance with no less than \$1 million limits; and
- (iii) auto liability insurance with not less than a \$1 million combined single limit covering owned, non-owned and hired autos.

In addition, seller shall maintain Excess liability insurance in an amount not less than \$5,000,000 following form of the underlying automobile and general liability policies.

The workers' compensation and employer's liability policies shall provide a waiver of subrogation in favor of the Indemnified Parties. In addition, the Indemnified Parties are to be named as additional insureds on Seller's General Liability and Automobile Liability

policies. Seller will keep in force the insurance required by this Article for the duration of performance under the Purchase Order, and after the last shipment, for at least as long as the applicable warranty period under Article 4 above. Seller's insurance shall be primary and noncontributory with respect to any insurance maintained by Buyer. Seller will maintain all required policies of insurance with insurers having a minimum AM Best rating of at least A X. Upon Buyer's request, Seller will furnish Buyer with certificates evidencing such insurance coverage at setting forth the amount(s) of coverage, policy number(s), and date(s) of expiration for such insurance. If the policy does not provide for notice directly to Buyer, Seller will immediately notify Buyer (required within thirty (30) days) if Seller receives any notice from any carrier providing the coverage required by these terms of the cancellation or modification of any insurance referenced therein. Neither the foregoing insurance nor the certificate will be construed in any way as a limitation on Seller's liability under a Purchase Order.

**16. Governing Law and Venue.** The validity, interpretation, construction, performance, enforcement and remedies of or relating to the Agreement, and the rights and obligations of the Buyer and Seller under the Agreement, will be governed by and construed in accordance with the laws of the State of Ohio, without regard to the conflict of law principles, rules or statutes of any jurisdiction. Any legal proceeding arising out of or in connection with the Agreement shall be brought in the Court of Common Pleas for Stark County, Ohio, or in the United States District Court for the Northern District of Ohio located in Akron, Ohio. Buyer and Seller consent to the exclusive jurisdiction and venue of the courts set forth herein. Seller and Buyer agree that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

**17. Amendment or Modification.** No changes or additions to the Agreement or these Terms and Conditions will be binding on Buyer unless set forth in a writing that specifically states it amends or modifies the Agreement or Terms and Conditions and is signed by an authorized representative of Buyer.

**18. Force Majeure.** Neither party will be liable for any delay or failure to perform where the delay or failure is directly caused by causes beyond its control, including but not limited to: Acts of God, acts of governmental, quasi-governmental, civil or military authority; refusal or delay in granting necessary licenses; fires, floods, earthquakes or other natural disaster; riot, insurrection, or acts of terrorism or the effects thereof; the inability to obtain necessary labor, materials or manufacturing; accident or wrecks in transport, or suspension of any mode of transport. In the event of such delay, the Due Date will be extended for a period equal to the time lost by reason of the delay, or where necessary to overcome the direct effects of the force majeure event. Notwithstanding the foregoing, if the effects of a force majeure event continue for more than thirty (30) days, Buyer may terminate a Purchase Order in whole or in part.

**19. Assignment.** Seller may not assign or delegate any of its duties or obligations under the Agreement without Buyer's prior written consent, and Buyer will not unreasonably withhold its consent. No assignment or delegation shall relieve the Seller of any of its obligations hereunder, and all terms of the Agreement shall apply to any assignee or subcontractor.

**20. Relationship of the Parties.** The relationship between Seller and Buyer under the Agreement is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the terms of the Agreement.

**21. Waiver.** No waiver by any party of any of the terms of the Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Buyer's failure or delay in exercising any rights, remedy, power, or privilege arising from the terms of the Agreement shall not operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**22. General.** The provisions of the Global Vendor Code of Conduct published on the Supplier Portal are incorporated by reference into these Terms and Conditions, and any violation by Seller of the Global Vendor Code of Conduct will be considered a default under these Terms and Conditions. The rights and remedies of Buyer hereunder are cumulative and in addition to all Buyer's other rights and remedies in law or equity. If any provision of the Agreement is prohibited by law, regulation or ordinance or is otherwise invalid or unenforceable, such illegality, invalidity, or unenforceability shall not affect or invalidate any of the remaining provisions of this Agreement. Each of the provisions of the Agreement will extend to and will, as the case may require: (i) bind Buyer and Seller and their respective successors, heirs and permitted assigns; and, (ii) inure to the benefit not only of the Buyer and Seller but also to the Customer and to its respective successors, heirs and assigns. Buyer and Seller agree that, except for Customer(s), the Agreement is not intended by either party to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation (other than a party or its permitted assignee) as a third-party beneficiary or otherwise under any theory of law. Seller will maintain, and make available to Buyer, adequate records of its activities under any Purchase Order, for a period equal to the duration of the Purchase Order and for ten (10) years following final shipment. Upon reasonable notice, Buyer or its representatives will have the right to review and audit the records of Seller relating to the performance of a Purchase Order, the Price contained in any Purchase Order or change order, or any other matter relating to the performance or default under a Purchase Order. The provisions of Articles 4, Warranty; 11, Confidential Information; 14, Seller Indemnification; 14, Seller Indemnification; 15, Seller Insurance; and 16, Governing Law and Choice of Forum will survive any termination of any Purchase Order and/or the Agreement.

**23. Government Contracts.** Goods and/or Services may be used by Buyer in fulfilling a U.S. government prime contract or subcontract and may, therefore, be subject to applicable U.S. government procurement regulations in effect at the time of accepting the Purchase Order. If the Purchase Order contains a U.S. Government Prime Contract Number, and involves the supply of a Commercial Item as defined under FAR 2.101 (48 CFR 2.101), the provisions of the Government Contract Supplement on the Supplier Portal apply and are incorporated into, and made a part of these Terms and Conditions. For Purchase Orders not involving the supply of a Commercial Item, the parties will negotiate in good faith the FARS and/or DFARS provisions to apply to the Purchase Order, but will include at least all such provisions as are made mandatory flow-downs in any contract with the third party

performing a Prime Contract.