

## Additional Terms and Conditions of Sale

**1. GOODS AND SERVICES.** The goods shall be sold and/or services performed by Seller (collectively referred to herein as the "Work") in accordance with the terms and conditions on the face hereof and the following terms and conditions (collectively "Seller's Terms and Conditions"), which shall constitute the entire Agreement of the parties with respect to the Work.

**2. ACCEPTANCE.** This offer is conditioned upon Purchaser's acceptance of Seller's Terms and Conditions. Seller hereby expressly rejects any and all terms in any purchase order or other order document of Purchaser which are in addition to, different from, or inconsistent with, (collectively the "Rejected Terms"), Seller's Terms and Conditions. Any purchase order or other order document issued by Purchaser shall, whether or not it contains terms and conditions that are in addition to, different from, or inconsistent with Seller's Terms and Conditions, and whether or not signed by Seller, be deemed to be Purchaser's acceptance of all of Seller's Terms and Conditions contained in this offer without amendment, and such Rejected Terms shall not be included in the Agreement of the parties, unless agreed to in a written instrument signed by Seller that specifically references that Seller's Terms and Conditions are being amended. Any provision in any purchase order or other order document of Purchaser that purports to reject Seller's Terms and Conditions shall not be binding on Seller. This offer may be withdrawn at any time prior to receiving Purchaser's acceptance meeting all of the requirements for acceptance provided in this Section 2 and Section 3 below, and this offer shall expire automatically if not accepted within thirty (30) days from the date on the face hereof.

**3. CREDIT APPROVAL.** Payment must be made in full prior to the Seller's commencement of any Work unless alternative payment arrangements are included within this offer, and Purchaser's acceptance of this offer as provided in Section 2 above is subject to approval of Purchaser's credit worthiness by Seller's Credit Department within thirty (30) days of Purchaser's acceptance. The evaluation of creditworthiness may include, but not be limited to, a review of Seller's records of Purchaser's payment history. In the event that Seller's Credit Department does not approve Purchaser's credit worthiness within the thirty (30) day period Purchaser's acceptance shall be conclusively deemed rejected by Seller and no agreement of the parties shall be deemed to exist for any purposes. For alternative payment terms, Seller may require Purchaser to execute Seller's form of security agreement and post other security.

**4. PAYMENT.** Purchaser shall make payments in accordance with this Agreement, or as otherwise approved by Seller's Credit Department. If Seller delays performance or release of the Work as requested by Purchaser for a period in excess of ten (10) days, or under paragraph 6 hereof ("Purchaser's Delay Request"), Purchaser shall pay the full purchase price (or the final installment) within thirty (30) days after Purchaser's Delay Request and shall pay a reasonable storage charge, and for on site work, a reasonable charge for the protection of the Work, and reasonable charges for Seller's de-mobilization and remobilization as determined by Seller. Any balance not paid when due shall draw interest at the rate of 1.5% per month (18% A.P.R.) on the average daily balance until paid or the highest rate allowed by applicable law, whichever is less. Notwithstanding anything to the contrary in paragraph 15 hereof, the parties agree that Seller may bring suit to collect any unpaid balance due from Purchaser (or submit such claim to arbitration in Seller's sole discretion), and Purchaser shall pay all attorney fees and court costs incurred by Seller in connection with the suit to collect such unpaid balance. The parties agree that any such suit brought by Seller shall not be stayed by virtue of any arbitration proceeding between the parties, shall proceed to judgment by the Court, and that all of Purchaser's defenses, avoidances and counterclaims (other than the defense of payment) which it might have shall be submitted to arbitration as provided in paragraph 15. All payments shall be made in currency of the United States.

**5. SPECIFICATIONS.** If Seller submits any drawings or other specifications to Purchaser for approval, and Purchaser does not approve or disapprove of them within the time specified by Seller, Seller shall have the right to perform the Work at a later date and charge a higher purchase price, as reasonably necessitated by Purchaser's delay.

**6. SHIPMENT AND COMPLETION.** So long as Purchaser is not in default, Seller shall ship the Work upon completion, except that, subject to paragraph 4 hereof, Seller shall delay shipment as requested by Purchaser in writing. Since the Work is to be manufactured to special order, the completion date designated on the face hereof is estimated and not guaranteed; Seller may ship or complete the Work within a reasonable period either before or after the designated completion date. Unless otherwise provided on the face hereof, Seller may ship the Work by any mode, and in full or partial shipments. Seller shall not be liable for any failure or delay to complete the Work due to causes beyond its control, including without limitation, acts of God, wars, terrorism, sabotage, casualties, accidents, labor disputes or shortages, governmental laws, ordinances, rules or regulations (such as priorities, requisitions, allocations and price adjustment restrictions), or an inability to obtain material, equipment or transportation.

**7. TITLE, RISK OF LOSS.** Unless otherwise provided on the face hereof, Work requiring shipment shall be shipped EXW Seller's plant: (a) and all risks of loss with respect to the Work shall transfer to the Purchaser after it has been placed in the possession of a carrier, which carrier may include Mueller Transportation, Inc.; and (b) legal title shall pass to Purchaser on Seller's receipt of payment in full. For Work performed on Purchaser's site or the end user's site: (c) Purchaser shall maintain or cause the end user to maintain Builder's Risk Insurance in the full value of the project of which the Work is a part, with Seller and its subcontractors named as additional insureds, and providing "All Risks" coverage for damage to the Work; (d) in the absence of Builder's Risk Insurance, or in the absence of coverage for the damage to the Work under said policy, Purchaser shall bear all risk of loss to the Work except for physical damage to the Work caused by the active negligence or willful misconduct of Seller or its subcontractors; and (e) title shall to the Work shall pass upon substantial completion of the Work subject to final payment by Purchaser.

**8. INSPECTION AND CLEANING.** Unless otherwise provided on the face hereof, Seller's obligation is to provide completed Work in broom-clean condition. For Work that is shipped, immediately upon receipt it is the Purchaser's responsibility to carefully inspect and properly remove road film, abrasives, chemicals, dust, or other residues from all surfaces that may have been deposited during the manufacture or shipment of the Work. Use or storage of the Work without properly removing residues may result in rust or corrosion. Failure to promptly and properly remove adhesive film from any protective sheeting and other wrappers may cause difficulty in removing these materials and leave residues. The Purchaser assumes total responsibility for any damage to the Work resulting from the failure to promptly and properly remove residues, wrappers and adhesive film.

Purchaser shall inspect the Work at the time and place of delivery for Work that is shipped, and upon substantial completion for Work performed on site, and Purchaser agrees that such occasion shall constitute a reasonable opportunity for its full inspection. The parties agree that Purchaser's failure to reject the Work within three (3) business days shall constitute acceptance of the Work. After Purchaser inspects and accepts the Work, Purchaser shall, except as provided in paragraph 10 hereof, be deemed to have acknowledged that the Work complies with all specifications, representations and warranties of Seller, and to have waived any claim or cause of action against Seller with respect to the Work. Purchaser is encouraged to inspect the Work during Seller's performance at Seller's plant and on site for Work performed on site, and to witness testing of the Work. For Work that is performed in whole or in part at Seller's plant, and if return of the Work is impractical, Purchaser may be required to inspect the Work at Seller's plant prior to shipment, which shall be deemed to be a reasonable opportunity to inspect and, upon satisfactory completion, shall constitute Purchaser's acceptance of the Work.

**9. TAXES AND DUTIES.** In addition to the purchase price, Purchaser shall pay all sales, use and excise taxes, tariffs, duties and other charges imposed by any country, state, locality or other political subdivision in connection with the sale or performance of the Work. For tax purposes, title to the Work shall pass from Seller to Purchaser upon being loaded for shipment, whether by common carrier, or Purchaser's own trucks, or otherwise, or upon substantial completion for Work performed on site.

**10. WARRANTIES.** Except as specific terms of this warranty are modified on the face hereof, or in a written agreement between Seller and Purchaser, Seller warrants to the original Purchaser, that Seller's Work shall be new, and shall be free of defects in material and workmanship. If the Work does not conform to this warranty within one (1) year from the date of original shipment, (or one (1) year from: the date of completion if shipment is delayed by Purchaser; the date of substantial completion for Work performed on site; or from the earlier date of Purchaser's or others use of the Work, as applicable in each case), Seller, at its election and expense, shall repair, replace, grant allowances for the repair or replacement of the defective Work, or refund the purchase price applicable to the defective portion of the Work, as provided below, but only after receiving written notification of any defects during the applicable warranty period, and substantiation that the Work has been: stored, installed, maintained and operated in accordance with Seller's recommendations and standard industry practice; not subjected to accident, alteration, abuse, misuse, temperatures, pressures, thermal performance, flow rates, media, start up, or vacuum conditions different from, or beyond the original specifications; and not subjected to improper service, disassembly, or assembly by the Purchaser. Seller is not liable for normal wear and tear, fouling or plugging, or items that are normally consumed in operation such as gaskets and o-rings. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ANY IMPLIED WARRANTY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED, EXCEPT THE WARRANTY OF TITLE AND AGAINST PATENT INFRINGEMENT FOR WORK OF SELLER'S DESIGN.

THIS WARRANTY DOES NOT EXTEND TO PRODUCTS NOT OF SELLER'S MANUFACTURE: AS TO SUCH PRODUCTS, SELLER CONVEYS TO PURCHASER THE WARRANTY, IF ANY, OF SELLER'S SUBCONTRACTORS AND SUPPLIERS, TO THE EXTENT TRANSFERABLE WITHOUT ADDITIONAL COST TO SELLER.

Purchaser shall not return Work claimed to be defective except at the direction of Seller. If Purchaser is directed to return the Work all charges for transporting such Work to Seller shall be prepaid by Purchaser, and Seller shall return such Work to Purchaser freight collect. Purchaser is responsible for all expenses of customs and duties. Permitted returns must be accompanied by a "Certificate of Use and Cleanliness" (available upon request) and a Material Safety Data Sheet similar to OSHA Form 20 for each applicable material used in the Work. If Seller determines that the Work is defective, Seller may at its option elect to: (i) repair the Work at Seller's facility, using independent contractors or Seller's own personnel, (ii) repair or replace the Work at Purchaser's facility, using independent contractors or Seller's own personnel, (iii) grant a reasonable allowance for repairs, but not exceeding the amount of the direct labor costs at the rates Seller would have paid for its own employees, (iv) grant a reasonable allowance for the replacement of the defective portion of the Work, but not exceeding the purchase price applicable to such portion, or (v) refund the purchase price applicable to the defective portion of the Work. When warranty work is performed at Purchaser's facility, Purchaser, without charge, shall fully cooperate with, and make the Work and its facilities available when the warranty work is scheduled, and shall provide all necessary utilities.

ORAL STATEMENTS BY SELLER'S EMPLOYEES OR REPRESENTATIVES DO NOT CONSTITUTE WARRANTIES, shall not be relied upon by Purchaser, and are not part of the Agreement between the parties. NO OTHER WARRANTIES are given beyond those set forth in this Agreement.

**11. LIMITATION OF LIABILITY.** Purchaser's exclusive remedy for claims arising out of or related to the Work shall be for damages. Seller shall not under any circumstances be liable for special, indirect, incidental, punitive, exemplary, multiple, or consequential damages, such as, but not limited to, loss of profits or revenue, costs of capital, plant shutdowns, claims by Purchaser's customer, or damage or loss to other property or equipment. The remedies of the Purchaser, and any other party, arising out of or related to the Work, set forth herein are exclusive, and the liability of Seller with respect to the Work, or anything done in connection therewith, or from the manufacture, sale, delivery, resale, installation, construction, performance, or use of any of the Seller's Work, whether based on theories of contract, negligence, strict liability, tort, laws or regulations, warranty, or otherwise, shall not exceed the price of the specific portion of the Work upon which the liability is based.

Seller is not responsible for corrosion or suitability of use for any material in any particular application. The corrosion resistance and suitability of use for a material is dependent on operating environment, conditions, cleaning practices, and many other factors beyond the control of Seller. The Purchaser/User of Seller's Work bears total responsibility for corrosion or suitability for use of all materials in their particular application.

**12. CANCELLATION.** Purchaser shall not have any right to cancel this Agreement without Seller's prior written consent, and without paying Seller a cancellation charge equal to total price of the Work less the estimated direct labor and materials not expended less the salvage value of materials already purchased.

**13. REMEDIES.** If Purchaser fails to make required payments in a timely manner, or breaches any of the other terms or conditions hereof or any other agreement with Seller, Seller shall have the right to terminate this Agreement and withhold further shipments or performance on this or any other order. The Seller's remedies provided herein shall be cumulative and in addition to any other remedies allowed by law or in equity. The failure of Seller to exercise any remedy shall not constitute a waiver of the right to exercise that, or any other remedy; and no waiver of any breach of any provision herein shall operate as a waiver of any other breach of the same or any other provision.

**14. APPLICABLE LAW.** This Agreement shall be governed by the internal laws of the State of Missouri, without reference to its choice of law provisions; Seller and Purchaser hereby consent to personal jurisdiction of the state and federal courts located in Springfield, Missouri; hereby consent to the exclusive venue of any suit in such courts; hereby WAIVE OF THE RIGHT TO TRIAL BY JURY in any suit; and in each case where the claims in the suit relate in whole or in part to this Agreement or the Work, and whether based on theories of contract, negligence, strict liability, tort, laws or regulations, warranty, or otherwise.

**15. ARBITRATION.** Except as provided in paragraph 4 hereof, any dispute, controversy or claim arising out of or relating to this Agreement or the Work (including, but not limited to, any dispute relating to the existence, interpretation, breach, or termination of this Agreement, or the agreement of the parties to arbitrate disputes) that cannot be resolved by the parties involved, within ninety (90) days of notification by either party of the dispute, shall be resolved by binding arbitration administered by and in accordance with the Arbitration Rules of the American Arbitration Association or such other arbitral body mutually agreed to by the parties. The award of the arbitrator(s) may be entered by any court having jurisdiction thereof. The costs of the arbitration shall be shared equally by the parties, and each party shall bear its own attorney fees and expenses. Any arbitration proceeding shall be conducted exclusively in Springfield, Missouri.

**16. MISCELLANEOUS.** This Agreement is intended by the parties as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein, and no modification shall be binding on Seller unless made in a writing signed by Seller. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by separate consideration and is in a writing signed by Seller. Purchaser shall not assign its rights or delegate its duties under this Agreement. Facsimile and E-mail signatures of the parties transmitted electronically, and which clearly indicate a party's intent to sign an agreement, shall constitute original signatures for all purposes. The invalidity of any portion of this Agreement shall not affect the validity of any remaining portions thereof.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.**