

**THE TERMS AND CONDITIONS SET FORTH ON [hoffmastercustomers.com](http://hoffmastercustomers.com) ARE AN INTEGRAL PART OF HOFFMASTER GROUP, INC.'S ACKNOWLEDGEMENT, AND ITS ACKNOWLEDGEMENT IS CONDITIONED ON THE BUYER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE.**

**TERMS AND CONDITIONS OF SALE**

Please read these Terms and Conditions of Sale (these “**Terms**”) carefully. These Terms materially affect the parties’ obligations. Hoffmaster Group, Inc. (“**Seller**”) is bargaining for and will do business only pursuant to these Terms. Seller’s acceptance of orders for the purchase of any goods (“**Goods**”) and/or services (“**Services**”) and together with any Goods, the “**Offerings**”) is expressly subject to and conditioned on the buyer of the Offerings (“**Buyer**”) agreeing to these Terms. Seller would not have acknowledged the Purchase Order from Buyer without Buyer’s agreement to these terms and conditions, and Buyer has been asked to review these terms. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Offerings covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

- 1. ACCEPTANCE.** Any offer by Seller is expressly limited to these Terms, and any price quotation referencing these Terms expires if not accepted by Buyer within ten (10) days after the date of the quotation, unless otherwise stated by Seller in such quotation. Seller may revoke an offer at any time prior to its acceptance by Buyer. All orders are subject to Seller’s written acceptance of such order. If Buyer’s order is accepted, such acceptance is made only pursuant to these Terms, and Seller’s acceptance of any order is limited to these Terms and conditional on Buyer’s agreement to these Terms. If any of these Terms are not acceptable to Buyer, Buyer shall promptly notify Seller thereof. If Seller does not receive Buyer’s written objection to these Terms within forty-eight (48) hours after Buyer receives the document referencing these Terms from Seller, or if Buyer receives delivery of any Goods or performance of any Services, these Terms shall be deemed irrevocably accepted in their entirety by Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- 2. ENTIRE AGREEMENT.** These Terms, together with the email, price quotation, order acknowledgement, or other similar form issued by Seller and referencing or relating to these Terms (together, this “**Agreement**”), are intended by the parties to be the final expression of their agreement, and are intended also as a complete and exclusive statement of the terms and conditions thereof. For the avoidance of doubt, the provisions of any purchase order or other writing inconsistent with these Terms will not constitute a part of the contract of purchase and sale, and Seller’s failure to object to provisions contained in any purchase order or communication from Buyer shall not be construed as an acceptance of any such provision or as a waiver of any term of these Terms. WITHOUT LIMITING THE FOREGOING, SELLER HEREBY EXPRESSLY OBJECTS TO ALL TERMS THAT ARE ADDITIONAL, INCONSISTENT OR CONTRADICTORY TO THESE TERMS, REGARDLESS OF WHETHER SUCH TERMS ARE SPECIFIED IN ANY OTHER EMAIL, ACKNOWLEDGEMENT, PURCHASE ORDER, CONFIRMATION, OR OTHER DOCUMENT SUPPLIED BY BUYER, INCLUDING WITHOUT LIMITATION THOSE TERMS AND CONDITIONS REGARDING WARRANTY, LIABILITY AND INDEMNITY. No additional or contradictory terms will be effective unless expressly agreed to in a writing hand-signed by Seller. Buyer’s order will be non-cancellable by Buyer unless Seller consents thereto in a writing hand-signed by Seller. No online or electronic terms or conditions will be binding upon Seller even if such terms are “accepted” in order to access or use a system.
- 3. PRICE.** Unless Seller specifically agrees to hold prices open for a length of time on Seller’s price quotation, all prices are subject to change without notice to Buyer and all Offerings will be invoiced to and paid by Buyer at Seller’s prices in effect at the time of delivery or performance. Without limiting the foregoing, Seller may increase or decrease prices from time to time based upon increases or decreases in raw materials or labor costs based upon any methodology and/or index determined by Seller, and based upon other factors, including without limitation freight charges and surcharges, changes in cost of labor, and force majeure events. All prices for Goods are exclusive of freight, shipping, drayage, boxing, and crating charges, both to and from Seller’s facility, and return freight charges for any reusable dunnage materials, and all such charges are the responsibility of, and will be paid by, Buyer. Unless otherwise specified in this Agreement, prices stated in this Agreement do not include any manufacturers, sales, use, excise or VAT taxes, charges or duties, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority on or measured by any transaction between Seller and Buyer, and Buyer shall pay all such amounts. In the event Seller is required to pay any of the foregoing amounts, Buyer shall reimburse Seller therefor. Prices may be increased by any increase in any of the foregoing amounts, as well as any increase in tariffs, duties, or other similar amounts, regardless of whether any such amounts were specifically included in quoted prices. Prices stated in this Agreement may not include travel or other out-of-pocket expenses incurred by Seller in connection with the performance of any Services, and Buyer shall reimburse Seller for all such expenses.
- 4. PAYMENT.** All payments are due in accordance with the payment terms agreed upon in writing between Buyer and Seller. If no such payment terms have been agreed upon, all payments are due in full net 30 days from the date of Seller’s invoice if paid via ACH and net 25 days if paid by check. Seller reserves the right to require full cash payment in advance or at the time of delivery whenever Seller, in its sole discretion, develops doubt as to Buyer’s financial responsibility; Seller will not in such event be liable for non-performance. Buyer shall incur a service charge if Seller receives payment after the due date, calculated as follows: one and one-half percent (1.5%) of the invoice amount if Seller receives the payment between one (1) and thirty (30) days after the due date; three percent (3%) if Seller receives the payment between thirty-one (31) and sixty (60) days after due date and for any dates thereafter. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery or performance of any Offerings if Buyer fails to pay any amounts when due. Buyer shall not withhold payment of any amounts due and payable by reason of any setoff of any claim or dispute with Seller.
- 5. DELIVERY; SHIPMENT; RISK OF LOSS.** Unless otherwise specified in this Agreement, all shipments of Goods are FOB (Incoterms 2020) Seller’s facility. Title and risk of loss will pass to Buyer at the time Goods are tendered at the shipping point. Buyer is responsible for arranging for shipment of Goods; provided, however, that in the absence of agreed upon shipping instructions, Seller may use its discretion as to the selection of shipping services and routes, at Buyer’s risk and expense. Seller assumes no responsibility in connection with the shipment of the Goods to Buyer. All shipping dates, or dates for performance of Services, are estimates only. Seller will use reasonable efforts to meet the estimated shipping or performance date, subject to Buyer’s prompt provision of all necessary, complete and correct specifications, information and data, but Seller may not be held responsible or liable for failure to

meet such estimated date. Seller delivers up to ten percent (10%) more or less than the quantity of Goods ordered by Buyer, Buyer shall accept such delivery and pay for any such excess quantities. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. In no event may Buyer return any Goods without the express prior written consent of Seller. Returns of standard stock items for any reason, other than defects, will be subject to a 25% restocking fee. Returns of custom items for any reason, other than defects, will not be permitted.

6. **FORECASTS.** Upon request, Buyer will provide to Seller, on a monthly basis, a rolling, written, non-binding 12-month forecast of its intended purchases for each upcoming month. Buyer will use its best efforts to ensure the accuracy of such forecasts, and will promptly notify Seller in writing if Buyer becomes aware of facts which are likely to cause Buyer's actual purchases to materially differ from those set forth in the most recent forecast. Upon the termination or other conclusion of this Agreement, the parties' relationship, or Buyer's intended purchases of a particular Good, Buyer shall purchase from Seller any inventory of such Goods that was produced, and any inventory of raw materials that was obtained, in reliance upon any forecasts or historic purchasing trends of Buyer (including pursuant to any minimum order quantities of Seller's suppliers). Seller makes no guarantee of its ability to produce any specific volumes of Goods, whether or not identified in forecasts, and Seller makes no commitments to supply any specified volumes of Goods except such volumes as are explicitly ordered by Buyer pursuant to a purchase order accepted by Seller as described herein.
7. **CHANGES; CANCELLATION.** Requests by Buyer for cancellation, termination, modification, suspension, or delay in shipment of Buyer's order are subject to acceptance or rejection by Seller in its sole discretion. Without limiting the foregoing, such requests will not be accepted on terms that do not fully indemnify, reimburse, and make Seller whole from and against any loss associated therewith. Such indemnity must include recovery of all costs incurred, including normal indirect and overhead charges, and a normal profit. Seller reserves the right to make safety changes without Buyer approval to address any actual or potential safety defect in any Offerings or changes in governmental regulations or standards. Seller shall provide notice to Buyer of any material change within a reasonable period of time thereafter.
8. **TERMINATION.** In addition to any remedies that may be provided to Seller under these Terms or applicable law, Seller may terminate this Agreement or any Order, in whole or in part, without liability and with immediate effect upon notice to Buyer for any reason or no reason at all. Without limiting the foregoing, Seller may terminate this Agreement or any Order, in whole or in part, without liability and with immediate effect upon notice to Buyer if Buyer (a) fails to pay any amount when due to Seller, whether or not under this Agreement, (b) has not performed or complied with any term of this Agreement, in whole or in part, or (c) 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.
9. **SURVIVAL.** The parties' rights and obligations that by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, compliance with laws, warranties, limitations on liability, confidentiality, and non-solicitation of employees will survive any termination or expiration of this Agreement pursuant to the terms otherwise set forth in this Agreement.
10. **CERTAIN BUYER OBLIGATIONS.** Buyer shall (a) cooperate with Seller in all matters relating to the Offerings and provide access to Buyer's premises, and to such office accommodations and other facilities as Seller requests for the purpose of performing or delivering any of the Offerings; (b) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that Seller deems necessary in order to complete and provide the Offerings in accordance with this Agreement; and (c) provide in a timely manner such customer materials or information that Seller requests in order to complete and provide the Offerings, and Buyer shall ensure that such customer materials and information are complete and accurate in all respects.
11. **COMPLIANCE WITH LAWS.** Buyer shall comply with all applicable federal, state and local laws, regulations, orders, and ordinances. Buyer represents and warrants that Buyer is and shall at all times remain in compliance with all laws administered by the U.S. Treasury Office of Foreign Assets Control or any other governmental entity imposing economic sanctions and trade embargoes ("**Economic Sanctions Laws**") against designated countries, entities, and persons ("**Embargoed Targets**"). Buyer is not an Embargoed Target or subject to any Economic Sanctions Law, and Buyer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver Goods or any portion of Goods to an Embargoed Target, or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law.
12. **LIMITED WARRANTY.** Seller warrants that, at the time of shipment, and for a period of 12 months all Goods will be free from material defects in materials and workmanship and materially conform with any specifications which have been expressly agreed upon in writing, hand-signed by Seller. To the extent any Services are performed, Seller further warrants that, at the time of performance, the Services will be performed in a professional and workmanlike manner, in all material respects. The warranties expressly provided herein may only be asserted by Buyer and may not be asserted by Buyer's customers or other users or beneficiaries of the Offerings. **THIS LIMITED WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY. OTHER THAN THE FOREGOING WARRANTY, SELLER HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE OFFERINGS (WHETHER GOODS OR SERVICES) INCLUDING ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES ON BEHALF OF SELLER OTHER THAN THOSE EXPRESSLY STATED HEREIN.**

Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, provided in connection with, or packaged together with the Offerings. Third Party Products are not covered by the limited warranty set forth in this Section. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

Seller makes no representations or warranties whatsoever with respect to any sample Goods provided to Buyer, whether paid for or provided without charge, and all sample Goods are provided on an AS-IS, WHERE-IS basis. Without limiting the foregoing, Seller makes no warranty that the sample Goods comply with any specifications or Buyer requirements, or that the any future Goods sold to Buyer will be the same as or similar to the sample Goods.

Notwithstanding anything to the contrary, Seller shall not be liable for any dye lot variation.

Except as may be set forth elsewhere in this Agreement with respect to any breach of the warranty for the Goods during the 12 month period set forth above, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

**THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.**

- 13. LIMITATION OF REMEDIES AND DAMAGES.** All claims for shipping error or freight damage must be made in writing within ten (10) days of receipt of the Goods with respect to which the claim is being made, and must specify the quantity and condition of the Goods that were received by Buyer; failure to make any such claims within such time will be deemed to constitute Buyer's irrevocable waiver of any such claims. Buyer shall promptly, but in no event more than ten (10) days inspect the Goods. If Buyer believes that any Goods are defective or vary from the amount or type of Goods ordered, Buyer shall notify Seller of the same in writing within ten (10) days of Buyer's receipt of the Goods. Buyer shall follow Seller's instructions with respect to any such Goods, including, without limitation, making such Goods available for Seller's inspection or promptly returning such Goods to Seller, at Buyer's sole cost and expense. Buyer will provide full cooperation and support to Seller in determining the root cause of any alleged defect.

With respect to defective Goods, Seller's liability and Buyer's sole and exclusive remedy hereunder will be limited to repair, replacement, or credit, at Seller's option, for any Goods that Seller determines in its reasonable discretion are actually defective. With respect to defective Services, Seller's liability and Buyer's sole and exclusive remedy hereunder will be limited to re-performance or credit, at Seller's option, for any Services that Seller determines in its reasonable discretion were actually defective. Seller will not be liable for a breach of warranty if (a) the defect arises because Buyer fails to follow Seller's oral or written instructions relating to the applicable Offering, including without limitation with respect to the storage, installation, commissioning, use, or maintenance, (b) Buyer alters or repairs the applicable Goods without the prior written consent of Seller, or (c) the applicable Goods becomes defective or inoperative due to normal use, accident, misapplication, abuse, or misuse; and any of the foregoing will immediately render the warranties provided by Seller null and void.

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, COSTS OF SUBSTITUTE GOODS AND SERVICES, MACHINE WORK OR LABOR COSTS, ARISING FROM THE SALE, USE, OR INSTALLATION OF THE OFFERINGS, FROM GOODS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER GOOD, OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER CONCERNING THE SALE, USE, OR INSTALLATION OF THE OFFERINGS, EVEN IF SELLER IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID TO SELLER BY BUYER FOR THE OFFERINGS WITHIN THE ONE (1) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO BUYER'S CLAIM. THE LIMITATIONS SET FORTH HEREIN SHALL BE VALID AND ENFORCEABLE NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY SET FORTH HEREIN.**

- 14. EXCLUSION OF TORT REMEDIES.** All sales of Goods hereunder are commercial sales transactions, and the parties intend for them to be governed by Article 2 of the Uniform Commercial Code (as adopted by the state set forth in Section 27 below) and related commercial legal principles. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT.
- 15. PRODUCT RECALLS.** Subject to the limitations set forth herein, Seller shall reimburse Buyer for the reasonable and documented out-of-pocket costs and expenses incurred by Buyer in connection with any recall, repair, replacement or refund program which is caused by Seller's gross negligence, intentional misconduct, or breach of the limited warranties set forth in these Terms, and which is (a) deemed necessary by Seller and Buyer or (b) is mandated by an order of a governmental agency to correct a manufacturing defect affecting the safety of Goods sold after notification by either party to such governmental agency; provided, that Seller shall not be responsible for reimbursing Buyer for any costs and expenses incurred by Buyer if such recall, repair, replacement or refund program relates in whole or in part to any deficiency or deviation, material part change, or part, sub-systems, specifications, product, packaging or designs, trade dress, appearance or features in the Goods provided or specified by Buyer. In the event a recall, repair, replacement or refund program is required, (i) Buyer shall fully cooperate with Seller, at Seller's request, in the implementation and administration of any program of recall, repair, replacement or refund, and (ii) Buyer shall furnish to Seller such records regarding any program of recall, repair, replacement or refund as Seller shall reasonably request. Buyer shall notify Seller in a timely manner of any condition known to it that may affect the safety of the Goods, and Buyer shall consult with Seller about any such condition prior to notifying any governmental agency. In no event shall reimbursement under this Section of reasonable and documented out-of-pocket costs include any amounts for lost profits or business goodwill or any other special, consequential, punitive or indirect damages. Nothing in this Agreement shall constitute a waiver or limitation by Seller of any constitutional, statutory, or other right to administrative or judicial review of any request, demand, or order of any governmental agency or body.
- 16. INDEMNIFICATION.** Buyer shall indemnify, defend, and hold Seller, its direct and indirect parent and subsidiary entities and other affiliates, and its and their respective directors, officers, employees, representatives, agents, direct and indirect customers and product users, and each of the foregoing's respective successors and assigns, harmless from and against any and all claims, demands, actions, proceedings, damages, losses, liabilities, costs, and expenses, of any kind whatsoever, including all attorneys' fees, arising from or relating to any actual or alleged claim whatsoever, including without limitation any claim of infringement of Buyer's patent, copyright, trademark, trade secret, or other proprietary right, and claims of product liability, personal injury, property damage, and product defect, which arises out of or is related to Buyer's or its direct or indirect customers' use of the Offerings, negligence, willful misconduct, violation or breach of any term of this Agreement by Buyer, fraud, or violation of law, and/or from Buyer's specifications for the Offerings; but shall not include any damages relating to any intellectual property, designs, or specifications provided by Seller.

- 17. INTELLECTUAL PROPERTY OWNERSHIP.** All intellectual property rights, including copyrights, patents, patent disclosures, inventions (whether patentable or not), trade dress, trade names, logos, corporate names, domain names, trademarks, service marks, trade secrets, know-how, specifications, and other confidential information, together with all derivative works and all goodwill associated therewith, and all other rights in and to all the Offerings, documents, work product, artwork, drawings, and other materials (whether or not copyrightable) that are delivered to Buyer under this Agreement or prepared by or on behalf of Seller in the course of performing under this Agreement, shall be exclusively owned or otherwise licensed by Seller. No license, transfer, or assignment of proprietary rights from Seller to Buyer will occur as a result of this Agreement or any order. Buyer warrants that any trademarks Buyer requests Seller to affix to any Goods are owned or authorized for use by Buyer. Buyer shall not contest, or assist others in contesting, the validity or ownership of Seller's intellectual property.
- 18. TOOLING.** All dies, tools, molds, patterns and the like involved in the manufacture of the Goods are and will remain the property of Seller, except that any dies, tools, molds, patterns and the like specifically ordered and paid for by Buyer, and specifically identified on the applicable Buyer order as owned by Buyer and Seller invoice as tooling to be owned by Buyer ("**Buyer Tooling**"), will remain the property of Buyer. Seller will return any Buyer Tooling to Buyer upon request after all amounts owed to Seller have been paid in full; provided, however, that if Buyer does not request in writing and accept delivery of the Buyer Tooling within thirty (30) days following the earlier of (a) the expiration or termination of this Agreement, (b) the conclusion of the project requiring the use of the Buyer Tooling, or (c) Seller's written request, then Seller shall thereafter own the Buyer Tooling free and clear of all liens or encumbrances, and Seller may use or dispose of the Buyer Tooling in Seller's sole discretion, and all of Buyer's rights in and to the Buyer Tooling shall cease and be of no further effect. Buyer is responsible for insuring and replacing all Buyer Tooling.
- 19. SECURITY INTEREST.** Buyer hereby grants to Seller and Seller hereby retains a lien on and a security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods sold by Seller to Buyer and all accessories and additions thereto, wherever located, whether now existing or hereafter acquired, as well as all spare parts and components therefor, and all proceeds of the sale or other disposition thereof, including, without limitation, cash, accounts, contract rights, instruments, and chattel paper ("**Subject Assets**"). If requested by Seller, Buyer shall execute one or more financing statements pursuant to the Uniform Commercial Code in a form satisfactory to Seller. In the event Buyer is in default under this Agreement, Seller will have the remedies of a secured party under applicable law, including without limitation the Uniform Commercial Code, and Seller may thereupon enter the premises of Buyer and remove and repossess all Subject Assets. The security interest granted under this Section constitutes a purchase money security interest under applicable law.
- 20. SETOFF.** Seller may set off any amount due from Buyer, whether or not under this Agreement, against any amount due Buyer hereunder.
- 21. CONFIDENTIALITY.** If the parties have entered into a non-disclosure and/or confidentiality agreement (the "**NDA**"), the terms of the NDA are incorporated herein by this reference and will control the disclosure of any confidential or proprietary information. If there is any conflict between the terms of the NDA and this Agreement, the terms of this Agreement will prevail to the extent of the inconsistency. If the NDA expires prior to the termination of this Agreement, the NDA is hereby deemed renewed and extended until the termination of this Agreement. If the parties have not entered into such an NDA, the parties agree that the remainder of this Section will apply. All non-public, confidential or proprietary information of or relating to Seller or Seller's direct or indirect affiliates, customers, and suppliers, including without limitation specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates disclosed by or on behalf of Seller, whether disclosed orally, visually or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," shall be deemed "**Confidential Information**," is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized by Seller in writing. Buyer agrees to maintain and protect the confidentiality of the Confidential Information, and to not disclose the Confidential Information except as legally required (and then only to the minimum extent legally required), and except to Buyer's employees who are bound by obligations of confidentiality with respect to such Confidential Information at least as stringent as those set forth herein and who have a need to know such Confidential Information for the purpose of fulfilling Buyer's obligations under this Agreement. Buyer shall be responsible for any breach of the confidentiality and non-use obligations set forth herein by such employees. Buyer may only use the Confidential Information in the performance of this Agreement, and may not use the Confidential Information for any other purpose. Buyer shall return to Seller, or destroy, with such destruction certified in writing to Seller, within five (5) days of the earlier of a request from Seller or the termination of this Agreement, all Confidential Information, and all written materials, and copies thereof, including materials stored in electronic media, containing, incorporating, or otherwise based upon, in whole or in part, the Confidential Information. This provision shall survive any termination of this Agreement for any reason, and in the event of any breach or threatened breach of this provision, Seller shall be entitled, in addition to any other remedies and damages, to injunctive relief without the necessity of paying bond and without being required to prove the existence, amount or insufficiency of damages.
- 22. FORCE MAJEURE; EXCUSE FROM PERFORMANCE.** Notwithstanding anything to the contrary contained herein, Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any whole or partial failure or delay in fulfilling or performing any term of this Agreement, and Seller may implement price increases due to increased costs, when and to the extent such failure, delay or cost increase is caused by or results from, in whole or in part, acts, events or circumstances beyond Seller's reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic (including COVID-19 pandemic), quarantine, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, regulation, law, or actions, including health orders; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances (whether or not such events are within the reasonable control of Seller); (h) shortage of adequate power or transportation facilities or raw materials (whether or not such events are within the reasonable control of Seller); (i) equipment malfunction or downtime; (j) unforeseen capacity constraints and/or demand increases; (k) cyberattacks and (l) other events beyond the reasonable control of Seller. If any such event renders Seller's timely delivery or performance of any Offering impracticable, at Seller's option, (x) the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay, or (y) Seller will be excused from performance and Buyer shall promptly, upon Seller's request, pay Seller for any Offerings then completed (whether fully or partly completed).
- 23. INSURANCE.** During the term of this Agreement and for two (2) years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect in amounts and types customary in Buyer's industry and satisfactory to Seller. All insurance policies must be underwritten by a company with a minimum A.M. Best Rating of A- VII. Certificates evidencing the required coverages must be furnished to Seller prior to the commencement of any work and on an annual basis thereafter, and at any additional times upon Seller's request. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in any of Buyer's insurance policies. If Buyer fails to maintain the insurance required herein, Seller may, in its sole discretion, purchase such insurance on Buyer's behalf and charge back the cost thereof to Buyer, with a reasonable markup. Seller shall

maintain product liability insurance in amounts satisfactory to it, automobile insurance with \$1,000,000 limit, and workers compensation insurance as required by statute.

- 24. COMPLIANCE WITH LAWS.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer shall advertise the Goods consistent with Seller's claims regarding the Goods.
- 25. NOTICES.** Any notice relating to this Agreement must be in writing and will be considered given within three (3) days after it is deposited, postage prepaid, with a registered mail service and addressed to the other party at the address given in this Agreement; or, if delivered by hand, when so delivered. Notices to Buyer may be delivered by email to any email address used by an employee of Buyer in communicating with Seller, and will be deemed given when sent to such email address.
- 26. ASSIGNMENT; DELEGATION.** Buyer may not assign, whether voluntarily or involuntarily, this Agreement or any of Buyer's rights hereunder nor delegate any of Buyer's obligations hereunder without Seller's prior written consent. Any purported assignment or delegation in violation of this Section will be void. Seller may assign this Agreement and any of Seller's rights hereunder and delegate any of Seller's obligations under this Agreement. If Seller assigns this Agreement or delegates any obligations under this Agreement (whether in whole or in part), Buyer shall, as relates to such part that was assigned or delegated, release Seller from all liability under this Agreement and hold the assignee solely responsible for performance of all such assigned or delegated obligations.
- 27. APPLICABLE LAW.** The validity, construction, and enforcement of this Agreement is governed by and interpreted under the laws of the State of Wisconsin, including, without limitation, its provisions of the Uniform Commercial Code. The United Nations Convention on Contracts for the International Sales of Goods (CISG) does not apply to this Agreement. Any controversy or claim arising out of or in connection with this Agreement will be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration will occur in Milwaukee County, Wisconsin, and will be conducted in the English language. Notwithstanding the foregoing, any claim by Seller for collection of unpaid amounts or breach of any confidentiality obligations may be pursued through any available method and in any available venue, including without limitation through litigation in the State or Federal courts located in the State in which Seller's headquarters is located, without first proceeding to arbitration pursuant to this Section, and Buyer hereby irrevocably submits to the personal jurisdiction of such courts. Service of process on Buyer may be made through any form permissible for delivering a notice at the address set forth in Buyer's purchase order. Buyer shall pay Seller any collection fees and all attorneys' fees incurred by Seller in enforcing this Agreement or defending against any claim for breach of this Agreement.
- 28. AMENDMENT; WAIVER.** No amendment or modification of any term or condition will be valid or binding upon Seller unless approved by Seller in a writing hand-signed by Seller. Unless Seller expressly indicates otherwise in such hand-signed writing, such modification is effective only in that instance and only for the purpose for which it is made and is not to be construed as a modification on any future occasion or of any future order or agreement. Clerical and stenographic errors are subject to correction by Seller. No waiver by Seller of any of the terms of this Agreement is effective unless explicitly set forth in a writing signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 29. SEVERABILITY.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination will not affect the remainder of this Agreement, which will remain in full force and effect.
- 30. INDEPENDENT CONTRACTORS.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement may 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 the authority to contract for or bind the other party in any manner whatsoever.
- 31. NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 32. INTERPRETATION.** Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of this Agreement, or any document drafted or delivered in connection with the transactions contemplated by this Agreement.
- 33. SURVIVAL.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidentiality, Applicable Law, and Survival.