

PREFORMED WINDINGS, INC. AND PARSONS PEEBLES GROUP, INC. STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

These Standard Terms and Conditions (“CONDITIONS”) are applicable to any Order placed with Preformed Windings, Inc., a Delaware corporation or Parsons Peebles Group, Inc., a Delaware Corporation.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following terms appearing in capital letters in these CONDITIONS shall have the meaning hereby assigned to them unless otherwise specified.

“**AFFILIATE**” shall mean any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company.

“**APPLICABLE LAWS**” shall mean all laws, rules, regulations, by-laws, decrees, orders and the like, whether of governmental or other authority or agency having jurisdiction over the PARTIES, the GOODS or the SERVICES and which are or may become applicable.

“**CHARGES**” means the aggregate of all sums payable under the CONTRACT calculated in accordance with the prices set out in the QUOTATION as may be amended in the ORDER CONFIRMATION, in the currency as specified in the QUOTATION.

“**CLAIM**” or “**CLAIMS**” means any claim, demand, cause of action, proceedings, judgement, award (including reasonable legal fees, costs and expenses and reasonable sums paid by way of settlement or compromise) liability, loss, expense, damages, penalty or fine arising out of or in connection with the performance or non-performance of the CONTRACT.

“**CLIENT GROUP**” means, where the PURCHASER is not the end user of the GOODS or the ultimate beneficiary of the SERVICES, such beneficiary or end-user, its AFFILIATES and its and their respective directors, officers, employees (including any agency personnel), but shall not include any member of the SUPPLIER GROUP.

“**CONDITIONS**” means these Standard Terms and Conditions.

“**CONFIDENTIAL INFORMATION**” means any and all information or data (whether oral or visual or recorded in writing or electronically or on any other medium) including information relating to PURCHASER GROUP’s or SUPPLIER GROUP’s operations, processes, plans, intentions, product information, IP RIGHTS, market opportunities, or business affairs disclosed to or acquired by the other PARTY in connection with the CONTRACT, whether or not the same was so disclosed or acquired before, on or after the date of the CONTRACT.

“**CONTRACT**” means the contract between the SUPPLIER and the PURCHASER for the supply of the GOODS or performance of the SERVICES consisting of the QUOTATION, the ORDER, any ORDER CONFIRMATION, these CONDITIONS, and any other documents (or parts of them) attached, referenced or specified in the QUOTATION or the ORDER CONFIRMATION.

“**DELIVERY**” shall mean the point in time when the delivery of any GOODS has been completed in accordance with clause 3.

“**FORCE MAJEURE**” means Acts of God (including epidemic, tidal wave, lightning, earthquake, hurricane), hostilities or acts of war (whether declared or not), riots, civil or military disturbances, national or regional strikes (excluding strikes, lock-outs and other industrial disputes or actions by of SUPPLIER GROUP) and acts of any government or public authority or any representative thereof whether or not legally valid and including imposing an export or import restriction, the occurrence of which, when unforeseeable and outside the control of the Party which invokes it, renders said PARTY unable to comply with all or part of its obligations under the CONTRACT.

FORCE MAJEURE does not include events such as the insolvency of any PARTY.

“**GOODS**” means the goods as detailed in the QUOTATION or the ORDER CONFIRMATION.

“**HSSE**” means health, safety, security, and environment.

“**INSOLVENCY EVENT**” means any of the following: (i) a meeting of creditors of a PARTY being held, or an arrangement of, with, or for the benefit of its creditors being proposed by or in relation to a PARTY; (ii) a receiver, administrator or similar person taking possession of or being appointed over a PARTY, or any execution or other process being levied or enforced (and not being discharged within seven (7) days) on the whole or a material part of the assets of the PARTY; (iii) the PARTY filing a petition for (a) appointment of a receiver, (b) appointment of an administrator, (c) petition for dissolution, or (d) petition for reorganization, whether any such filing be made under state or federal law; or (iv) the filing of a petition under the United States Bankruptcy laws seeking the dissolution or reorganization of the PARTY, whether filed by the PARTY or a THIRD PARTY.

“**IP RIGHTS**” means all intellectual property rights throughout the world, whether present or future, including rights in relation to patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, semiconductor or circuit layout rights, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and rights to apply for registration of any such rights, renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection.

“**LIQUIDATED DAMAGES**” means the damages agreed to by the PARTIES for the failure to deliver GOODS by the applicable delivery date; the PARTIES having agreed to that amount is not a penalty, but is a reasonable estimate of damages, as actual damages would be uncertain and difficult to determine. The amount of the LIQUIDATED DAMAGES is set forth in clause 3.11 below.

“**ORDER**” means PURCHASER’s order for GOODS or SERVICES as set out in PURCHASER’s purchase order form.

“**ORDER CONFIRMATION**” shall have the meaning set out in clause 2.5.

“**PARTY**” means PURCHASER or SUPPLIER as the case may be and “**PARTIES**” shall mean PURCHASER and SUPPLIER.

“PERSON” means any individual, company, firm, partnership, association or body corporate.

“PURCHASER” means the person designated as such in the ORDER.

“PURCHASER GROUP” means PURCHASER, its AFFILIATES and its and their respective directors, officers, employees, and CLIENT GROUP but shall not include any member of SUPPLIER GROUP.

“QUOTATION” means the quotation(s) provided by the SUPPLIER to the PURCHASER in respect of the GOODS or the SERVICES.

“SERVICES” means the services to be supplied by SUPPLIER to PURCHASER as detailed in the QUOTATION or the ORDER CONFIRMATION.

“SUBCONTRACTOR” means any PERSON with whom SUPPLIER has subcontracted directly or indirectly at any level in relation to the provision of the SERVICES or the GOODS.

“SUPPLIER” means Preformed Windings, Inc., a Delaware corporation or Parsons Peebles Group, Inc., a Delaware Corporation.

“SUPPLIER GROUP” means SUPPLIER, its SUBCONTRACTORS, and their AFFILIATES, its and their respective directors, officers, employees (including agency personnel), but shall not include any member of PURCHASER GROUP.

“THIRD PARTY” means any PERSON that is not a member of PURCHASER GROUP or SUPPLIER GROUP.

“WORKSITE” means all the lands, waters and other places on, under, in or through which the SERVICES are carried out, including manufacturing, fabrication and storage facilities, offices and workshops.

1.2 Interpretation

- (a) All headings in these CONDITIONS are used for convenience only and shall not affect the construction or validity of the CONTRACT.
- (b) Any reference herein to a clause shall, unless expressly stated otherwise, be construed as a reference to the relevant recital or clause of these CONDITIONS.
- (c) Reference to any statute, statutory provision or statutory instrument includes a reference to the statute, statutory provision or statutory instrument as amended, extended or re-enacted from time to time.
- (d) Reference to the singular includes a reference to the plural and vice versa. Reference to persons shall include companies and firms and vice versa. Reference to any gender includes a reference to the other genders.
- (e) “Including” shall be construed to mean “including but not limited to”.

2. BASIS OF CONTRACT

2.1 The Contract is constituted by:

- (i) the QUOTATION;
- (ii) these CONDITIONS;
- (iii) the ORDER; and
- (iv) any other documents incorporated into it by reference in the QUOTATION, the ORDER or these CONDITIONS.

For the purposes of interpretation, the constituent parts of the CONTRACT shall rank in the order above, with the QUOTATION being of the highest rank, these CONDITIONS being of the second highest rank and so on. In the event of any ambiguity or conflict between any term or condition of any of the constituent parts of the CONTRACT, those of the higher ranking part shall prevail over those of the lower ranking part.

2.2 These constituent parts of the Contract set forth the entire agreement and understanding among the Parties as to the subject matter thereof, and merges and supersedes all prior discussions, agreements and understandings of each and every nature among the PARTIES.

2.3 Unless stated otherwise, a QUOTATION given by SUPPLIER shall only be valid for a period of thirty (30) calendar days from its date of issue.

2.4 The ORDER submitted by PURCHASER to purchase the GOODS and/or SERVICES from SUPPLIER in accordance with any QUOTATION to which it refers shall specify PURCHASER’s requirements for such GOODS or SERVICES. PURCHASER is responsible for ensuring that such requirements for the GOODS or SERVICES (including any applicable specification relating thereto) are set out clearly in the ORDER and are complete and accurate.

2.5 The SUPPLIER may issue a written acceptance of the ORDER to PURCHASER (the “ORDER CONFIRMATION”).

2.6 These CONDITIONS shall apply to the CONTRACT to the exclusion of any other terms that PURCHASER seeks to impose or incorporate, including any terms attached to the ORDER, or which are implied by trade, custom or course of dealing.

2.7 Any samples, drawings, descriptive matter or advertising produced by SUPPLIER and any descriptions or illustrations contained in SUPPLIER’s catalogues or brochures are, unless specified in the QUOTATION, produced for the sole purpose of giving an approximate idea of the GOODS or SERVICES described in them. The samples, drawings, descriptive matter or advertising shall not form part of the CONTRACT or have any contractual force, unless such items have expressly been incorporated into the CONTRACT.

3. SUPPLY OF SERVICES AND GOODS

3.1 SUPPLIER shall supply the GOODS ordered or perform the SERVICES requested for PURCHASER in accordance with the specification of the GOODS or the SERVICES as set out in the QUOTATION in all material respects. Such GOODS or SERVICES shall be provided in accordance with the time period as set out in the QUOTATION or ORDER CONFIRMATION, or if no time is specified, within a reasonable time period.

- 3.2 All personnel employed on the SERVICES shall, for the work they are required to perform, be competent, properly qualified and skilled in accordance with good industry practice.
- 3.3 SUPPLIER shall be responsible for any SERVICES performed.
- 3.4 Where the SERVICES are to be carried out at a non-SUPPLIER GROUP controlled WORKSITE:
- (a) SUPPLIER shall commence the SERVICES at or from the mobilization point on the commencement date, as the same shall be detailed in the ORDER, and shall proceed with the SERVICES in accordance with the schedule agreed in the CONTRACT.
 - (b) SUPPLIER shall use reasonable efforts to ensure such WORKSITE is free of waste materials and debris generated by SUPPLIER GROUP. On completion of the SERVICES, or any part of them, SUPPLIER shall (except as otherwise instructed by PURCHASER) clear and remove all SUPPLIER equipment, waste material, rubbish and debris generated by SUPPLIER GROUP from such WORKSITE, leaving it in a clean and safe condition.
 - (c) SUPPLIER shall use reasonable efforts to comply with PURCHASER's instructions and directions on all matters relating to the SERVICES, to the extent that PURCHASER has provided those instructions and directions to SUPPLIER in advance of performing those SERVICES.
- 3.5 In relation to GOODS which are items of equipment, the provisions of clauses 3.6 to 3.12 shall apply with respect to DELIVERY.
- 3.6 In relation to ORDERS for GOODS, SUPPLIER shall:
- (a) deliver such GOODS EXW (Incoterms 2010), or as otherwise agreed by the PARTIES prior to DELIVERY and specified in the CONTRACT;
 - (b) notify PURCHASER when the GOODS are ready for collection from its premises, or such other DELIVERY point agreed by the PARTIES; and
 - (c) deliver such GOODS during normal business hours (9.00am until 5.00pm GMT) or as otherwise agreed by the PARTIES.
- 3.7 If applicable, SUPPLIER shall ensure that DELIVERY of any GOODS is accompanied by a delivery note which shows all relevant PURCHASER and SUPPLIER reference numbers, the type and quantity of the GOODS (including the code number of the GOODS, where applicable), special storage instructions (if any) and, if the ORDER is being delivered in installments, the outstanding balance of GOODS (if any) remaining to be delivered. Each DELIVERY shall also comply with all APPLICABLE LAWS relating to the labeling, packaging, storage, handling, and delivery of the GOODS.
- 3.8 DELIVERY of the GOODS shall be completed when the GOODS are at the location specified for DELIVERY ready for unloading or collection, as applicable.
- 3.9 SUPPLIER may deliver the GOODS by installments, if applicable, which shall be invoiced and paid for separately. Each installment shall constitute a separate contract. Any delay in DELIVERY or defect in an installment shall not entitle PURCHASER to cancel any other installment.
- 3.10 The time of DELIVERY is not of the essence. However, SUPPLIER shall use reasonable efforts to prevent or minimize any delay in commencing manufacture of, completing and delivering any part of the GOODS for which there is an agreed date for such commencement, completion and DELIVERY. SUPPLIER shall not be liable for any delay in DELIVERY of the GOODS that is caused, and shall be entitled to an extension of any agreed date or time for DELIVERY in the event of, FORCE MAJEURE or PURCHASER's failure to provide SUPPLIER with adequate delivery instructions or any other instructions that are relevant to the supply of the SERVICES or GOODS.
- Notwithstanding the foregoing, in the event that SUPPLIER fails to deliver the GOODS by any quoted date for delivery, and an extension of time for delivery has not been agreed with PURCHASER, then SUPPLIER shall pay to PURCHASER LIQUIDATED DAMAGES for delay. The amount of the LIQUIDATED DAMAGES that the PARTIES have agreed to herein is one percent (1%) of the price of the GOODS for each full week or part thereof that shall elapse from the delivery date up to and including the date of actual delivery. SUPPLIER's financial liability for LIQUIDATED DAMAGES under this clause shall be capped at five percent (5%) of the price of the GOODS. PURCHASER may terminate the CONTRACT for late delivery if the LIQUIDATED DAMAGES reach five percent (5%) of the price of the GOODS.
- 3.11 If PURCHASER fails to accept delivery of the GOODS within three (3) business days of SUPPLIER's notification to PURCHASER that the GOODS are ready for collection or unloading, as applicable, then, except where such failure or delay is caused by an event of FORCE MAJEURE, or SUPPLIER's failure to comply with its obligations under the CONTRACT:
- (a) DELIVERY of the GOODS shall be deemed to have been completed at 9.00am GMT on the third business day after the day on which SUPPLIER notified PURCHASER that the GOODS were ready; and
 - (b) SUPPLIER shall store the GOODS until actual physical delivery takes place, and charge PURCHASER for all related costs and expenses (including insurance).
- 4. INSPECTION AND ACCEPTANCE**
- 4.1 PURCHASER shall be entitled to inspect, test and review the GOODS at all reasonable times throughout the manufacture of the same, provided that PURCHASER gives SUPPLIER no less than forty-eight (48) hours' notice and agree to compliance with SUPPLIER's HSSE procedures if such inspection takes place at SUPPLIER's or its SUBCONTRACTOR'S WORKSITE. Within two (2) business days of such inspection, PURCHASER shall inform SUPPLIER if it discovers that the GOODS (or any part thereof) do not comply or are unlikely to comply with the material requirements of the CONTRACT, and SUPPLIER shall use reasonable efforts to ensure such compliance.

- PURCHASER shall have the right to conduct further inspections, tests or reviews after SUPPLIER has carried out its remedial actions.
- 4.2 PURCHASER shall inspect the GOODS within five (5) business days of DELIVERY and notify SUPPLIER if it intends to reject any GOODS which are DELIVERED and which fail to meet the material requirements of the CONTRACT.
- 4.3 If PURCHASER does not notify SUPPLIER of its intention to reject the GOODS in accordance with clause 4.2 then, after five (5) business days from DELIVERY, the GOODS will be deemed to have been accepted by PURCHASER.
- 5. WARRANTY**
- 5.1 Goods warranty. SUPPLIER warrants that, during the period starting on the delivery date and ending twelve (12) calendar months thereafter (the "**Warranty Period**"), that the GOODS will:
- (i) conform with the specification set forth in the QUOTATION in all material respects; and
 - (ii) be free from all defects in design, materials and workmanship.
- 5.2 Subject to clause 5.4, any failure of the GOODS to comply with the warranties referenced herein shall be known as a "**Defect**," if:
- (i) PURCHASER gives notice in writing to SUPPLIER during the Warranty Period and within a reasonable time of discovery that some or all of the GOODS do not comply with the applicable warranties set forth in clause 5.1;
 - (ii) SUPPLIER is given a reasonable opportunity to examine such GOODS; and
 - (iii) PURCHASER (if requested to do so by SUPPLIER) returns the GOODS to SUPPLIER'S place of business at SUPPLIER'S costs;
- Then SUPPLIER shall at its sole option, repair or replace the defective GOODS, or refund the price of the Defective GOODS, or refund the price of the Defective GOODS, or part thereof, in full.
- 5.3 The warranties in clause 5.1 shall apply to any replacement, substitute or remedial GOODS or equipment. In the event that the GOODS are repaired, the Warranty Period shall be renewed from the date on which the PURCHASER confirms in writing that the GOODS have been repaired satisfactorily or, in the absence of such confirmation, the date on which the repairs are completed to the sole opinion and satisfaction of the SUPPLIER.
- 5.4 SUPPLIER shall not have any liability under clause 5 to the extent that the Defect is the result of:
- (i) negligent or malicious damage caused after delivery; the failure to use, store, maintain or repair the GOODS in accordance with instructions (if any) or good industry practice (as applicable);
 - (ii) use of the GOODS for a purpose for which they are not commonly used and which was not made known to you prior to delivery;
 - (iii) the Defect arises as a result of SUPPLIER following any drawing, design or specification supplied by PURCHASER;
 - (iv) PURCHASER alters or modifies such GOODS without the prior written consent of SUPPLIER;
 - (v) the Defect constitutes ordinary wear and tear;
 - (vi) the Defect arises or is exacerbated because PURCHASER failed to follow SUPPLIER'S written instructions as to the storage, commissioning, installation (including the winding of coils) and maintenance of the GOODS, or (if there are none) good trade practice regarding the same;
 - (vii) the GOODS differ from their description or specification as a result of changes made to ensure they comply with APPLICABLE LAWS; or
 - (viii) the Defect is the result of willful or negligent damage caused by a person other than a member of the SUPPLIER GROUP.
- 5.5 Except as provided in this clause 5, SUPPLIER shall have no liability to PURCHASER in respect of the GOODS' failure to comply with the warranty set forth in clause 5.1.
- 5.6 The provisions in this clause 5 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract.
- 5.7 Services Warranty: SUPPLIER warrants to PURCHASER that the SERVICES will be provided using the reasonable skill and care to be expected of a reputable SUPPLIER experienced in providing services and deliverables the same as or similar to the SERVICES.
- 5.8 Subject to clause 5.9, if:
- (a) PURCHASER gives notice in writing to SUPPLIER within a reasonable time of discovery that part or all of the SERVICES do not comply with the warranty set out in clause 5.7; and
 - (b) SUPPLIER is given a reasonable opportunity to examine any equipment which was the subject of the SERVICES,
- SUPPLIER shall, at its sole option, re-perform the part of the SERVICES which are the subject of the notice or refund the price of such SERVICES in full.
- 5.9 Except as provided in clause 5.8, SUPPLIER shall have no liability to PURCHASER in respect to the failure of the SERVICES to comply with the warranty set out in clause 5.7.

6. GENERAL LEGAL PROVISIONS, PERMITS, LICENSES, AND COMPLIANCE WITH APPLICABLE LAWS

- 6.1 SUPPLIER shall ensure that at all times it has and maintains all the licenses, permissions, authorisations, consents and permits that it needs to carry out its obligations under the CONTRACT.
- 6.2 Without prejudice to the provisions of clause 11 of these CONDITIONS, SUPPLIER shall observe, be bound by and comply with all APPLICABLE LAWS.
- 6.3 Nothing in these CONDITIONS shall be construed so as to create any relationship between us and you beyond that of PURCHASER and SUPPLIER. The PARTIES hereto are separate entities.
- 6.4 SUPPLIER warrants and represents that it is acting as an independent SUPPLIER and neither SUPPLIER nor any of its employees or personnel shall be the employees, agents or servants of PURCHASER.
- 6.5 The CONTRACT constitutes the entire agreement between the PARTIES with respect to the provision of the GOODS and any SERVICES and supersedes all prior oral and written understandings, agreements, qualifications and representations made between the PARTIES prior to the CONTRACT. Each PARTY acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other PARTY which is not set out in the CONTRACT.
- 6.6 If any provision of these CONDITIONS shall be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of these CONDITIONS except only so far as shall be necessary to give effect to the construction of such invalidity, and in such a case any such invalid provision shall be deemed severed from these CONDITIONS without affecting in any way the validity of the balance of these CONDITIONS.
- 6.7 A waiver of any right under the CONTRACT is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a PARTY in exercising any right or remedy under the CONTRACT or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.
- 6.8 Termination of the CONTRACT or PURCHASER's acceptance of the GOODS (or any part thereof) or any SERVICES shall not release the PARTIES from obligations which expressly or by their nature survive the CONTRACT or extend beyond termination of the CONTRACT and any acceptance of the GOODS and/or SERVICES.
- 6.9 All notices and other communications to be given under the CONTRACT shall be in writing and delivered to the other PARTY at its registered office or such other address as may be notified in writing to the other PARTY from time to time.

7. TITLE AND RISK

- 7.1 The risk in the GOODS shall pass to PURCHASER on DELIVERY.

7.2 Title to the GOODS shall not pass to PURCHASER until SUPPLIER receives payment in full (in cash or cleared funds) for the GOODS.

7.3 Until title to the GOODS has passed to PURCHASER, PURCHASER shall:

- (a) prior to installation, store the GOODS separately from all other goods held by PURCHASER so that they remain identifiable as SUPPLIER's property;
- (b) not remove, deface or obscure any identifying mark on or relating to the GOODS;
- (c) maintain the GOODS in satisfactory condition and keep them insured against all risks for their full price from the date of DELIVERY;
- (d) notify SUPPLIER immediately if it becomes subject to an INSOLVENCY EVENT; and
- (e) give SUPPLIER such information relating to the GOODS as SUPPLIER may require from time to time.

7.4 If, before title to the GOODS passes to PURCHASER, PURCHASER becomes subject to an INSOLVENCY EVENT, then, without limiting any other right or remedy SUPPLIER may have, SUPPLIER may at any time require PURCHASER to deliver all GOODS in its possession which have not been resold or irrevocably incorporated into another product.

7.5 If PURCHASER fails to comply promptly with clause 7.4, SUPPLIER may enter any premises of PURCHASER, or of any THIRD PARTY where the GOODS are stored, in order to recover them. The costs for any such action by SUPPLIER shall be borne by PURCHASER.

8. CHARGES and PRICING

8.1 In consideration for the provision of the SERVICES and any GOODS, PURCHASER shall pay SUPPLIER the CHARGES.

8.2 The CHARGES shall be as set out in the QUOTATION, or if none, the ORDER CONFIRMATION or, if no charges are quoted, as set out in SUPPLIER's published rates list in force as of the date of DELIVERY.

8.3 Unless otherwise stated in the CONTRACT, the CHARGES are exclusive of all charges for the packaging, packing, shipping, carriage, insurance and delivery of any GOODS, and any duties, taxes, imports or levies; and PURCHASER shall pay to SUPPLIER such additional amounts as set out in this clause 8.3 or as identified in SUPPLIER's invoice.

8.4 SUPPLIER may, by giving notice to PURCHASER prior to the scheduled delivery date, increase the price of the GOODS and SERVICES to reflect any increase in the cost of the same that is due to any:

- (a) factor beyond SUPPLIER's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs) provided that, following such increase, the PURCHASER shall have the right to terminate the ORDER by giving notice

to SUPPLIER within 14 (fourteen) days of being notified of the price increase;

- (b) request by PURCHASER to change the DELIVERY date(s) or date(s) for the performance of the SERVICES, quantities or types of the GOODS requested under the CONTRACT, or the specification for such SERVICES and/or GOODS as set out in the QUOTATION; or
- (c) delay caused by any instructions of PURCHASER or failure by PURCHASER to give SUPPLIER adequate or accurate information or instructions.

9. INVOICING AND PAYMENT

- 9.1 SUPPLIER shall invoice PURCHASER at the address specified in the ORDER for all sums due under the CONTRACT referencing the ORDER number. Invoices shall be submitted in accordance with the milestones set out in the QUOTATION (if any) or the ORDER, or if no milestones are specified, upon completion of the SERVICES or DELIVERY of the GOODS, as applicable.
- 9.2 If PURCHASER disputes any invoice, PURCHASER shall notify SUPPLIER of the amount(s) under dispute within ten (10) calendar days of the date of the invoice failing which PURCHASER shall be deemed to have accepted that all sums specified on the invoice are valid, accurate and due for payment. PURCHASER shall pay the undisputed part of the invoice in accordance with clause 9.3. If on resolution of any dispute further sums are due to the SUPPLIER, SUPPLIER shall invoice such sums and these shall be payable in accordance with clause 9.3 together with interest on the further amount at the rate of three percent (3%) per annum above the LIBOR rate as of the date shown on the original invoice.
- 9.3 PURCHASER shall pay SUPPLIER's invoice in full and cleared funds within thirty (30) calendar days of the date of the invoice, and in such currency specified in the QUOTATION, to such bank account as SUPPLIER shall designate on such invoices.
- 9.4 If PURCHASER fails to make any payment due to the SUPPLIER under the CONTRACT by the due date for payment, then without prejudice to the SUPPLIER's other rights and remedies:
 - (a) PURCHASER shall pay interest on the overdue amount at the rate of four percent (4%) per annum above the LIBOR rate from the date shown on the original invoice.
 - (b) such interest shall accrue on a daily basis from the date shown on the original invoice, until actual payment of the overdue amount, whether before or after judgment. PURCHASER shall pay the interest together with the overdue amount; and
 - (c) the SUPPLIER reserves the right to suspend DELIVERY of GOODS and performance of any SERVICES which are undelivered or unperformed (as applicable) at the due date for such payment unless and until such payment is received.

Subject to clause 9.2, any and all amounts due under the CONTRACT shall be paid without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

10. GENERAL INDEMNITY

PURCHASER shall defend, indemnify and hold SUPPLIER and SUPPLIER GROUP harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, SUPPLIER as a result of or in connection with any:

- (i) alleged or actual infringement of any third party's Intellectual Property Rights or other rights arising out of the use of the Goods by the PURCHASER, the PURCHASER GROUP or the CLIENT GROUP;
- (ii) claim made against SUPPLIER in respect of any liability, loss, damage, injury, cost or expense sustained by PURCHASER, PURCHASER GROUP or the CLIENT GROUP, or it or their employees, officers, directors, agents or by any of it or their customers or any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the GOODS, as a consequence of a direct or indirect breach (including breach of any express or implied warranty) or negligent performance or failure or delay in performance of the CONTRACT by PURCHASER howsoever arising; or
- (iii) claim arising from PURCHASER GROUP'S own negligence.

11. LIABILITIES

- 11.1 If either PARTY becomes aware of any incident likely to give rise to a Claim under any indemnity under these CONDITIONS, it shall notify the other of that Claim as soon as it is able. Both PARTIES shall co-operate fully in investigating the incident, allowing the indemnifying party to have conduct of the Claim and providing all reasonable assistance in relation to the defense of such Claim.
- 11.2 Neither PARTY shall make any admission of liability, agreement or compromise in relation to a CLAIM, or any suspected Claim, without the written prior consent of the other PARTY.
- 11.3 Nothing in these CONDITIONS shall limit or exclude the IP indemnity contained at clause 12.6, or for any other matter in respect of which it would be unlawful for SUPPLIER to exclude or restrict liability (including SUPPLIER'S liability for fraud or fraudulent misrepresentation).
- 11.4 Subject to clause 11.3, SUPPLIER's total liability to PURCHASER in respect of all losses arising under or in connection with the CONTRACT, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one hundred percent (100%) of the CHARGES.

11.5 The provisions of clause 11 shall survive termination or expiration of the CONTRACT.

12. CONFIDENTIALITY, PROPERTY AND INTELLECTUAL PROPERTY RIGHTS

12.1 PURCHASER shall exercise diligence in verifying the accuracy of its supply of information and particulars to SUPPLIER. SUPPLIER shall be entitled to rely on any information supplied by the PURCHASER. However, should SUPPLIER discover any discrepancies, ambiguities or inaccuracies in such information, it shall inform PURCHASER in writing as soon as possible.

12.2 Any PURCHASER supplied materials, equipment, tools, drawings, specifications, data and documents ("PURCHASER MATERIALS") and all rights in the PURCHASER MATERIALS shall remain the exclusive property of PURCHASER. SUPPLIER shall keep the PURCHASER MATERIALS in its custody, maintain them in good condition, not dispose or use the same other than in accordance with PURCHASER's written instructions or approval, and shall return them to PURCHASER as soon as they are no longer necessary for the performance of the CONTRACT.

12.3 All IP RIGHTS of PURCHASER shall remain the exclusive ownership of PURCHASER and may be used by SUPPLIER only for the purpose of fulfilling its obligations under the CONTRACT.

12.4 All IP RIGHTS of SUPPLIER or its SUBCONTRACTORS shall remain the exclusive property of SUPPLIER or its SUBCONTRACTORS, as applicable. SUPPLIER hereby grants a royalty-free, non-exclusive licence to PURCHASER (and to any end user to which PURCHASER supplies any GOODS) to use the drawings supplied to it by SUPPLIER and the manuals provided by SUPPLIER only as may be necessary to install, use, maintain or repair the GOODS for the duration of the CONTRACT.

If necessary, SUPPLIER shall use reasonable efforts to procure the grant by any SUBCONTRACTORS of a license, similar to that granted in this clause 12, with respect of any SUBCONTRACTOR IP RIGHTS.

Neither the license granted pursuant to this clause 12.4, nor any other provision of the CONTRACT shall create any right or interest for the PURCHASER with respect to the detailed design, design drawings or underlying or internal design of the machine to which this CONTRACT relates.

The license granted pursuant to this clause 12.4 may not be transferred without the prior written consent of SUPPLIER (such consent not to be unreasonably withheld or delayed).

12.5 SUPPLIER warrants that the supply of any GOODS (and any component part thereof) and the performance of the SERVICES shall not infringe any IP RIGHTS of any THIRD PARTY.

12.6 SUPPLIER shall save, indemnify, defend and hold harmless PURCHASER GROUP from all CLAIMS arising out of any alleged infringement of any IP RIGHTS of any THIRD PARTY arising out of or in connection with SUPPLIER's performance of its obligations under the CONTRACT, except where any such alleged or actual infringement necessarily arises from the ORDER and/or PURCHASER's instructions.

However, SUPPLIER shall inform PURCHASER as soon as reasonably practicable to do so should it become aware of any such infringement or potential infringement as a result of PURCHASER's instructions.

12.7 In the event of any such infringement, SUPPLIER may, at its sole option (a) procure the right to use the GOODS or perform the SERVICES without impairing the suitability of the GOODS or the level of performance of the SERVICES; or (b) modify, re-perform or replace the GOODS or SERVICES, as applicable, so that they are rendered non-infringing.

12.8 To the extent that the GOODS are to be manufactured in accordance with a specification provided by PURCHASER, PURCHASER shall save, indemnify, defend and hold harmless SUPPLIER GROUP from all CLAIMS arising out of any alleged infringement of any IP RIGHTS of any THIRD PARTY arising out of or in connection with SUPPLIER's use of the specification provided by PURCHASER.

12.9 The provisions of this clause 12 shall survive termination or expiration of the CONTRACT.

12.10 Subject to clause 12.11, each PARTY undertakes that it shall keep confidential and shall not disclose and shall use only for the purpose of the CONTRACT any CONFIDENTIAL INFORMATION provided by the other PARTY.

12.11 The obligations of confidentiality under the CONDITIONS shall not apply to any CONFIDENTIAL INFORMATION which the receiving PARTY can prove:

- (a) was already known to it prior to its receipt from the disclosing PARTY;
- (b) was subsequently disclosed to it lawfully by a THIRD PARTY who did not obtain the same (whether directly or indirectly) from the receiving PARTY;
- (c) was in the public domain at the time of receipt by the receiving PARTY or has subsequently entered the public domain other than by reason of the breach of the provisions of clause 12, or of any of the obligations of confidence owed to the disclosing PARTY (or its SUBCONTRACTORS as the case may be) by the receiving PARTY or by any of the persons listed in clause 12.12;
- (d) is independently developed by the receiving PARTY without using or referring to CONFIDENTIAL INFORMATION; or
- (e) is required to be disclosed by a court of law, regulatory authority or tribunal of competent jurisdiction.

12.12 Notwithstanding the provisions of clause 12.11, either PARTY may disclose CONFIDENTIAL INFORMATION provided by the other PARTY to any SUBCONTRACTORS and its professional advisers who need such CONFIDENTIAL INFORMATION for the purpose of enabling SUPPLIER to perform any of its obligations or to exercise its rights under the CONTRACT, provided that such PARTY shall procure that the recipient keeps such CONFIDENTIAL INFORMATION confidential and does not disclose it for any other purpose.

12.13 The provisions of this clause 12 shall survive termination or expiration of the CONTRACT.

13. AUDIT

PURCHASER and its authorized representatives shall have the right to audit SUPPLIER's compliance with its obligations under the CONTRACT, during normal business hours and on providing SUPPLIER with no less than ten (10) business days' notice in writing of the same. SUPPLIER shall use reasonable efforts to cooperate with PURCHASER and its authorized representatives in any such audit.

14. TERMINATION

14.1 Without limiting any rights or remedies contained in these CONDITIONS, either PARTY may terminate the CONTRACT by written notice to the other PARTY if the other PARTY:

- (a) commits a material breach of any term of the CONTRACT and (if such a breach is remediable) fails to promptly commence and thereafter diligently proceed to remedy such breach; or
- (b) suffers an INSOLVENCY EVENT.

14.2 Without limiting any rights or remedies contained in these CONDITIONS, SUPPLIER may further terminate the CONTRACT immediately by providing written notice to PURCHASER of any amount due under this CONTRACT remains unpaid sixty (60) calendar days after the due date for payment despite notice having been given to the PURCHASER requiring payment.

14.3 On SUPPLIER's termination of the CONTRACT as a result of PURCHASER's default, PURCHASER shall immediately pay to SUPPLIER all of SUPPLIER's outstanding unpaid invoices and interest and shall pay all costs and expenses reasonably incurred by SUPPLIER in preparation for the performance of its obligations under the CONTRACT and arising out of such termination.

14.4 Without limiting any rights or remedies contained in these CONDITIONS, the PURCHASER may terminate the CONTRACT for any reason by written notice to the SUPPLIER. If the PURCHASER terminates the CONTRACT early pursuant to clause 14.4, the PURCHASER shall pay any unpaid invoices of SUPPLIER, together with a termination fee in the amount of any anticipated profit the SUPPLIER would otherwise be entitled to if the CONTRACT continued in effect and all costs and expenses, reasonably and properly incurred by the SUPPLIER in the performance of the CONTRACT prior to receipt of such notice, in relation to such early termination of the CONTRACT.

14.5 Termination of the CONTRACT, however arising, shall not affect any of the PARTIES' rights, remedies, obligations, and liabilities that have accrued as of the date of termination.

14.6 All of the clauses of these CONDITIONS which expressly or by implication survive termination of the CONTRACT shall continue in full force and effect.

15. FORCE MAJEURE

15.1 Neither PURCHASER nor SUPPLIER shall be responsible for any failure to fulfill any term or condition of the CONTRACT if and to the extent that fulfillment has been delayed or temporarily prevented by an event of FORCE MAJEURE, if appropriate notification has been given in accordance with clause 15.2.

15.2 In the event of a FORCE MAJEURE occurrence, the PARTY that is or may be delayed in performing its obligations under the CONTRACT shall notify the other PARTY without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.

16. THIRD PARTY RIGHTS

The CONTRACT is made for the benefit of the PARTIES to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else, except that our Group Companies may enforce it as if they were a PARTY to it.

17. SUBCONTRACTORS

SUPPLIER shall be responsible for all work, acts, omissions and defaults of any SUBCONTRACTOR as fully as if they were work, acts, omissions or defaults of SUPPLIER.

18. INDEPENDENCE OF SUPPLIER

SUPPLIER warrants and represents that it is acting as an independent SUPPLIER and neither SUPPLIER nor any of its employees or personnel shall be the employees, agents or servants of PURCHASER.

19. ASSIGNMENT

19.1 PURCHASER shall not, without SUPPLIER'S prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of PURCHASER'S rights or obligations under the Contract.

19.2 SUPPLIER may at any time assign any of its rights or obligations under the CONTRACT to any of its AFFILIATES.

20. CHANGES OR VARIATIONS TO THE CONTRACT

20.1 Subject to clause 20.3, any variation, including any additional terms and conditions, to the CONTRACT shall only be effective when agreed in writing and signed by the authorised signatories of both PARTIES or, with respect to minor amendments to the CONTRACT, agreed to by email.

20.2 Any adjustment to the CONTRACT PRICE or DELIVERY date resulting from any such variation shall be valued at the appropriate rates and prices included in the CONTRACT or, in the absence of any appropriate rates and prices, a fair valuation shall be made.

20.3 The SUPPLIER shall have the right, without agreeing the same in writing with PURCHASER, to make any changes to the GOODS or SERVICES which are necessary to

comply with any APPLICABLE LAWS, or which do not materially affect the nature or quality of the GOODS or SERVICES. SUPPLIER shall notify PURCHASER of the same in any such event.

21. GOVERNING LAW

21.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Alabama.

21.2 The parties irrevocably agree to submit to the exclusive jurisdiction of the United States District Court for the Northern District of Alabama.

Version 1.0

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