

Humboldt Wedag, Inc.

GENERAL TERMS AND CONDITIONS OF PROCUREMENT

The following terms and conditions ("General Terms and Conditions") apply to all purchase orders ("Purchase Order") placed by Humboldt Wedag, Inc. ("Purchaser") with the vendor ("Vendor") and form an integral and binding part of the contractual relationship between Purchaser and Vendor with due respect to such Purchase Order. In this regard, the word "Supplies" shall mean the Vendor's scope of delivery (i.e., tangible goods, intangible goods, and/or services) under the Purchase Order.

§ 1 Effective Date

An enforceable contract between Purchaser and Vendor ("Contract") shall arise, become effective, and be mutually binding on the day when Vendor counter-signs the Purchase Order or a copy of the Purchase Order, or issues an order confirmation, or otherwise notifies the Purchaser by e-mail or other sufficient written form that the Vendor agrees to the Purchase Order and it will be deemed that Vendor agrees at the same time with all the Purchase Order's terms and conditions including these General Terms and Conditions. If the Vendor (i) confirms the Purchase Order in writing but with deviating terms and conditions, or (ii) does not confirm the Purchase Order in the above ways, but begins to manufacture, deliver, and/or render the Supplies, or (iii) received a down payment from Purchaser in relation to a Purchase Order, the acceptance of such Purchase Order including these General Terms and Conditions is assumed to have taken place on the date of the Purchase Order ("Deemed Acceptance") and a Contract is established.

In case of a Deemed Acceptance, Vendor and Purchaser expressly agree that (i) a Contract has been established even if the Purchase Order and Vendor's quotation and/or order confirmation deviate in their contents, and (ii) that the Purchase Order shall supersede such quotation and/or order confirmation, and (iii) that such Purchase Order including these General Terms and Conditions shall be the sole contractual documents.

General terms and conditions of Vendor, if any, shall not become applicable.

§ 2 Price Basis

The Contract price is a fixed price including all materials and labor that the Vendor needs for performance of his contractual duties.

For domestic shipment within the U.S.:

The Contract price shall be based on FCA Vendor's workshop or packing station (according to ICC Incoterms 2010, publication no. 715E) including truck packing.

For international shipment:

The Contract price shall be based on FOB any suitable seaport (according to ICC Incoterms 2010, publication no. 715E) including seaworthy packing (with 12 months package conservation).

§ 3 Taxation

The Contract price includes all taxes applicable to the Contract and the Vendor's performance of such.

§ 4 Currency

The Contract price is stated in the official currency of the United States of America, i. e., the U.S. Dollar (currency sign: \$ / banking code: USD).

§ 5 Terms of Payment

100% net cash, within 30 days after receipt of transport documents, proof of delivery and commercial invoice. Invoices shall be exclusively addressed to:

Humboldt Wedag, Inc.
c/o Accounting Dept.
400 Technology Parkway
Norcross, GA 30092, USA

or sent via e-mail to: accounts.payable@khd.com

For the avoidance of doubt, the payment of an invoice, whether in part or in full, shall not be deemed the acceptance of the Supplies or the release of Vendor's legal duties.

§ 6 Bank Guarantees

Only for Vendors supplying main drive motors, main drive gearboxes, belt/chain/pan/bucket conveyors, fans, filters, automation systems and/or software systems (Contract value > USD 75,000.00):

A performance bank/insurance guarantee covering 10% of the Contract price shall be provided by Vendor, to be valid from receipt of Purchaser's payment until acceptance of the successfully commissioned and tested Supplies.

For all Vendors supplying any kind of tangible Supplies (Contract value > USD 75,000.00):

A warranty bank/insurance guarantee covering 5% of the Contract price shall be provided by Vendor, to be valid for the whole warranty period.

§ 7 Assignment

The Contract is personal to each of the parties and shall not be assigned or transferred by Vendor to a third party (except an affiliate of the Vendor) without first obtaining the prior approval in writing of Purchaser. The contracting of sub-suppliers, in order to perform Vendor's obligations under this Contract shall, however, be Vendor's right notwithstanding the above.

Purchaser shall have the right to assign the Contract with all its rights and obligations to any affiliate without the prior written consent of the Vendor. Without limiting the generality of the foregoing, Vendor understands and agrees that: (i) Purchaser will resell the products and services to affiliates, and may assign this Contract to its affiliates, immediately after the execution hereof; and (ii) following such assignment, Purchaser's affiliates shall have and may exercise all rights and privileges of Purchaser under this Contract, including the right to enforce the warranties and all other obligations of Vendor hereunder.

§ 8 Country of Origin

The Supplies may be sourced from global producers, however, in compliance with the U.S. rules and restrictions on particular countries.

§ 9 Design Rules and Standards

The Supplies' design has to follow the rules and standards applicable for the United States of America, including but not limited to ANSI, ASME, ASTM, NEMA and the MSHA and OSHA code (mining and occupational safety standard).

All weights, dimensions, physical or other scientific figures, whatsoever, shall be construed and stated according to the metric system.

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§ 10 Documentation and Language

All correspondence, documents, drawings and all technical documentation that comes along with the Supplies shall be furnished in English language. Assembly, installation, commissioning, operation and maintenance manuals and all written notices attached to Supplies must, in cases of international shipment, also be furnished in the language of the country where such Supplies will be finally used. Technical documentation (including but not limited to aforementioned manuals) shall be furnished as one software copy; besides unsecured .pdf formats the Purchaser requests also unsecured source formats, like .xls, .cad, .doc, etc.

Final as-built drawings shall be provided upon Purchaser's request.

§ 11 Quality Assurance, Inspections, and Rejection of Nonconforming Supplies

Purchaser shall have the right, by prior agreement during regular working hours and at its cost, to send its agent(s), employee(s) and other staff from time to time to the manufacturing, assembly or sales facility of Vendor or any third party involved in the production and supply for the purpose of inspecting, examining and testing Supplies, during the process of manufacture, processing, assembly, or storage, in order to determine: (i) whether the Supplies conform or are likely to conform (once produced) to the warranties; and (ii) compliance with the provisions of this Contract and/or as provided for in any contract that Purchaser has with a third party that involves the Supplies procured under this Purchase Order. Purchaser shall give 10 days notice of any such inspection. Any delays related to the scheduling of an inspection may result in a corresponding delay in the final delivery of the Supplies.

Without prejudice to any other rights or remedies, if in the opinion of Purchaser, any Supplies inspected pursuant to this stipulation or otherwise pursuant to this Contract fail, or finished Supplies are likely to fail in Purchaser's reasonable opinion, to comply with the warranties and technical guarantees, Purchaser may give written notice thereof to Vendor. Vendor shall, upon receipt of such notice immediately carry out an inspection of its own and thereafter immediately inform Purchaser of its findings and the necessary measures taken in order to conform to the provisions of this Contract. If Vendor shall fail to do so, Purchaser may consider that Vendor has breached the applicable Contract, and enforce its rights afforded under this Contract accordingly. The costs and expenses of such compliance by Vendor shall be borne by Vendor. In the event that the Purchaser should decide to accept the Supplies, or a part thereof, which did not pass the quality inspection, the Vendor shall agree to a significant reduction of the Contract price, which, at a minimum shall be commensurate with any resulting damages suffered by Purchaser.

The Purchaser has the right to inspect the Supplies on or after the delivery date. Purchaser, at its sole option, may inspect all or a sample of the Supplies, and may reject all or any portion of the Supplies if it determines the Supplies are nonconforming or defective. If Purchaser rejects any portion of the Supplies, Purchaser has the right, effective upon written notice to Vendor, to: (a) rescind the Contract in its entirety; (b) accept the Supplies at a reasonably reduced price; or (c) reject the Supplies and require replacement of the rejected Supplies. If Purchaser requires replacement of the Supplies, Vendor shall, at its expense, promptly replace the nonconforming Supplies and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Supplies and the delivery of replacement Supplies. If Vendor fails to timely deliver replacement Supplies, Purchaser may replace them with goods from a third party and charge Vendor the cost thereof and terminate this Contract for cause pursuant to Section 26. Any inspection, election not to inspect, or other action by Purchaser under this Section shall not reduce or otherwise relieve the Vendor of

any obligations under the Contract, and Purchaser shall have the right to conduct further inspections after Vendor has carried out its remedial actions.

Acceptance by Purchaser shall not constitute acceptance as to latent or hidden defects not subject to discovery upon reasonable inspection.

§ 12 General Manufacturing Instructions

The Vendor shall manufacture Supplies in a purposive way so that the assembly efforts, the related consumption of welding wire and other assembly materials and the risk of diminished quality due to assembly outside proper workshops can be minimized.

Progress reports shall be provided by Vendor to Purchaser on a bi-weekly basis.

§ 13 Delivery Time and Storage

Drawings shall be delivered two weeks after date of Contract.

Electronic data sheets shall be delivered two weeks after approval of drawings.

All other technical documentation (including but not limited to all kinds of manuals) shall be delivered two weeks before delivery of the Supplies.

Supplies shall be delivered within the time indicated in the Contract.

Time is of the essence.

The Vendor shall send timely notification to Purchaser of any possible or actual delays in the performance of the Purchaser Order, including the cause for delay. Such notification, however, does not relieve Vendor of any obligations under the Contract.

The Vendor shall be prepared to store the Supplies in a proper and protective manner at Vendor's premises, free of charge for the Purchaser, for a period of up to three months if so requested by Purchaser, as the case may be.

§ 14 Packing Instructions

The Supplies shall be securely packed for shipment to the delivery address (indicated in the Contract or to be advised later on) with as little additional weight as possible and in the smallest appropriate cubical bulk possible consistent with safe carriage by truck, ocean vessel, railroad or aircraft and insurance requirements.

The Supplies shall be labelled in accordance with Purchaser's instructions and any applicable laws, rules and regulations or requirements of the carrier, and properly packed and secured so as to reach the delivery address in an undamaged condition.

For generating packing lists, the Vendor shall exclusively use the Purchaser's packing list template which will be provided by the Purchaser as an MS Excel file prior to shipment. The applicable mandatory language for packing lists is English.

Purchaser shall not be obliged to return to Vendor any packaging or packing materials for the Supplies if Supplies are accepted by Purchaser, unless this is required by local legislation or has been agreed otherwise in the individual Contract.

In no event shall any packing documentation contain any invoices or other billing documents, which shall be addressed exclusively to Purchaser's accounting department.

§ 15 Shipping Instructions

The Contract number and the customer order number shall be noted on all invoices and bills of lading or other transport documents. Vendor shall provide Purchaser or another person or entity designated by Purchaser with appropriately completed clean bills of lading (or copies) or other transport documents and other documents reasonably requested

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by Purchaser to enable it or its designated person or entity to claim the Supplies from the carrier.

Partial shipments and shipments from multiple places are to be avoided as much as reasonably possible.

Weights and dimensions of the packages shall be notified to Purchaser's logistics department two weeks prior to the agreed delivery time.

For overseas Vendors: If the Contract requests for EXW Incoterms, Vendor shall provide to Purchaser's appointed carrier agent a Shipper's Export Declaration showing that Supplies are for post exportation overseas and that Vendor is the initial local shipper only.

§ 16 Changes

Purchaser reserves the right at any time to request changes in quantity, packaging, date and place of delivery, and quality upon notice given to Vendor. If any such change causes an increase or decrease in the cost of any Supplies, or the time required for the performance of any work under this Contract, Vendor shall make a written request for an equitable adjustment within 30 days of the date of receipt of such change, and Purchaser shall either make an equitable adjustment in the price or delivery schedule, or both, or shall withdraw such change, and the applicable Contract shall be modified in writing accordingly. If Vendor should fail to make a written request for an equitable adjustment within 30 days, such right shall be deemed waived.

Purchaser shall be informed in writing by Vendor about product alterations, product upgrades, amendments of additive packages or product data sheets, etc., in case any such changes have an impact on the original Purchaser's specifications and/or might influence in any way the performance of the Contract.

To the extent that Vendor has sufficient knowledge of OEM specifications, Vendor agrees to recommend Supplies that meet or exceed the OEM's applicable specifications.

§ 17 Suspension and Cancellation

The Purchaser has the right to instruct the Vendor to suspend, in whole or in part, the performance of the Contract for a period of up to 6 months. All reasonably incurred costs by the Vendor during this period shall be compensated by the Purchaser against presentation of Vendor's documentation.

The Purchaser has the right to cancel the Contract (i) within 2 months after the effective date of Contract free of charge, or (ii) at any time after 2 months after the effective date of Contract against compensation of the Vendor's reasonably incurred costs for material, labor and other directly incurred costs related to the performance of the Contract until the date of cancellation. Cancellation of the Contract, or a part thereof, shall in no way be construed or interpreted as a waiver of Purchaser's rights to claim any damages to which the Purchaser might have become entitled to prior to or on the day of cancellation.

§ 18 Warranty

The Vendor warrants that the Supplies are free from any defects in material, quality, workmanship, and title, and that he has the right to furnish the Supplies to the Purchaser, and that by doing so no patents, trademarks, copyrights, or other rights of third parties will be violated. The above stated warranty shall be granted by the Vendor for:

- 24 months after date of acceptance (subject to a performance test) for all items except spare parts and loose material Supplies (e. g., steel plates, beams, ducts, etc.);
- 30 months after date of delivery for spare parts and loose material Supplies (e. g. steel plates, beams, ducts, etc.); and
- 5 years after date of acceptance (subject to an approval procedure) for all Supplies that are or become part of a building structure.

Defects of Supplies shall at the Vendor's discretion be repaired or replaced by the Vendor to the following effect:

- The warranty period for repaired Supplies parts shall be extended by the time period starting from the date of Purchaser's written notice of defect until the date of re-commissioning of the repaired Supplies;
- The warranty period for replaced Supplies is equivalent to the original warranty period granted hereinabove and shall count from the date of re-commissioning or, at the latest, from the date of re-delivery as per shipping document.

§ 19 Wear Guarantees

Wear Parts are all items and parts of the Supplies that will, by their designed functionality, technical purpose, and/or intended use, be exposed to mechanical abrasion.

All Wear Parts shall be guaranteed to last for 14,000 hours of operation/usage if not otherwise stipulated in the Contract.

§ 20 Liquidated Damages

In the unlikely event of delayed delivery, the Vendor shall pay 1% of the Contract value per full week of delay, up to a maximum of 10% of the Contract value for all delays.

§ 21 Confidentiality

Over the lifecycle of the Contract, the Parties might exchange various sensitive information and data, including but not limited to technical data, design data, layouts, process data, business related information, market related information, customer related information, project related information, etc. ("Information") on various media being intangible and/or tangible, including but not limited to verbal transmission, electronic transmission, electronic devices or media for electronic devices, e-mail, telefax, letter, drawings, paper, etc. ("Media") in order to mutually fulfill the Contract.

The Parties shall not disclose, distribute, copy, exploit or use, howsoever, any Information, except as permitted by the other Party or as inevitably necessary to fulfill the Contract. Ownership to the relevant Media, as far as such Media can be legally owned, and intellectual property of any Information remains, howsoever, with the legal owner respectively intellectual proprietor at the time of disclosing and both Parties agree that ownership and intellectual property shall under no circumstances pass to the other Party howsoever. No licenses or rights under any patent, copyright, trademark, intellectual property, or similar right or legal construct are granted or transferred, neither expressly nor implied, by this Contract, except as for the right to use such Information to fulfill the Contract.

The Parties undertake to keep all and any Information belonging to the disclosing Party (including the terms and conditions of the Contract) strictly secret and confidential and neither Party shall disclose or permit any such Information to be disclosed or given access thereto to any third party unless permitted in writing by the disclosing Party or unless inevitably necessary to fulfill the Contract. This confidentiality agreement shall extend to all officers, directors, shareholders, representatives, successors, affiliates, agents, servants, employees, contractors, and assigns of the Parties. Each Party has the right to injunctive relief in the event of any breach or threatened breach of this confidentiality agreement.

Each Party shall protect such Information from disclosure to others, using the same degree of care used to protect own proprietary information of like importance, but in any case using no less than a reasonable degree of care.

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The giving of access to and disclosure of Information shall not be construed as express or implied representation made as to the accuracy or completeness of such.

If the receiving Party is uncertain as to whether any information received is considered Information defined hereinabove, it must treat the information as if it was such Information and as not being in the public domain unless and until the disclosing Party agrees in writing that the information is in the public domain.

The receiving Party shall not be bound to keep confidential any Information if and to the extent that:

- the information is, or becomes part of the public domain otherwise than by breach of this Contract;
- the information becomes known to the receiving Party from a source other than the disclosing Party;
- the information is disclosed by disclosing Party to a third party without restrictions on its disclosure;
- the information is independently developed or discovered by the receiving Party not as a result of any activities relating to the Purpose;
- the receiving Party may disclose Information in accordance with judicial or other governmental order, provided it shall give the disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent; or
- the disclosing Party has authorized in writing the disclosure of the relevant Information.

The Parties acknowledge that any damage resulting from a breach of the confidentiality agreement might not be calculated or appraised in a mathematical way due to the complex and intangible nature thereof. However, the Parties acknowledge that their Information is of significant value and any breach of the confidentiality agreement is likely to result in substantial disadvantages, losses and/or damage that cannot be defined or reasonably foreseen at the time of signing this Contract. Therefore, the Parties agree that liquidated damages of USD 50,000.00 per incident of breach of this confidentiality agreement shall be paid by the breaching Party to the damaged Party, the damage of which shall be deemed to have taken place by a breach without the damaged Party having to produce proof if and to which extent it may have suffered such damage. The Parties further agree that the above agreed liquidated damages shall not be the exhaustive and conclusive relief and compensation to a damaged Party, but that the liquidated damages rather are an additional relief and compensation to any other relief and/or compensation a damaged Party might seek under this Contract and under applicable laws.

The Parties agree that any tangible or appropriate intangible media shall, after the Purpose is fulfilled or at any other time as required in writing by the disclosing Party, be destroyed or returned to the disclosing Party as the latter decides. However, for legal purposes, as far as required by law, the receiving Parties may archive Media including the therein contained Information in order to fulfill governmental requirements.

The rights to use Information as granted under this confidentiality agreement cease to exist upon full performance or other termination of the Contract, not affecting any other rights provided by law however, whereas the obligations entailed by this confidentiality agreement survive any termination and remain binding without time limitation.

§ 22 Labor Conditions and Safety

Without prejudice to the warranties, representations and covenants on the part of Vendor in this Contract, Vendor represents and warrants to Purchaser that Vendor complies with the Standard of Social Accountability SA8000 i.e., (1) No child labor, (2) No forced labor, (3) Respect local occupational health and safety regulations, (4) Freedom of Association and collective bargaining, (5) No Discrimination, (6) No corporal

punishment, mental or physical coercion or verbal abuse, (7) Respect legally mandated work hours, and (8) Guarantee of a fair compensation to its employees. (This standard is available at <http://www.sa-intl.org>.)

Vendor will use properly trained, qualified personnel and incorporate safeguards, rules and procedures that will, to the best of Vendor's knowledge and belief, minimize the risk of any personal injury to Purchaser's employees, Vendor's employee, or others at any applicable construction site, and the loss of, or damage to property and equipment during the performance of the service provided.

Vendor's personnel will comply with Purchaser's established health and safety rules, practices and procedures; use safety equipment and conduct themselves in a way that assures the health and safety of themselves, their fellow employees and/or any other persons at working facilities or construction sites.

Vendor's personnel shall be responsible for maintaining a clean, safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified, analyzed and controlled or eliminated immediately. Vendor shall document this in its health and safety program.

Vendor must insure that all equipment used by Vendor's employees or sub-contractors is inspected prior to use; any defective equipment must be corrected or taken out of service. Documentation of inspections must be maintained by Vendor and subject to inspection by Purchaser.

Personal protective equipment is the sole responsibility of the Vendor and its sub-contractors. It is the sole responsibility of the Vendor and its sub-contractors to determine the level of personal protective equipment needed. Therefore Vendor and its sub-contractors are responsible to verify that required hazard assessments including air monitoring, noise assessments, or other industrial hygiene services have been conducted before starting to work.

§ 23 Environment

Without prejudice to the warranties, representations and covenants on the part of either party in this Contract, each party represents to the other that the representing party currently possesses, and shall at all times during the term of this Contract possess all permits, licenses and consents which are required of such representing party pursuant to all national, provincial and local applicable laws, regulations and other requirements of governmental bodies relating to pollution or protection of the environment, including without limitation laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants or hazardous or toxic materials or wastes or petroleum products, as defined in all applicable national, provincial and local laws, regulations or other requirements, into ambient air, surface water, ground water or lands, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or hazardous or toxic material or wastes (collectively "Environmental Laws").

Each party represents to the other party that it is now, and shall at all times during the term of this Contract be in full compliance with all terms and conditions of any of such party's required permits, licenses and consents, and in full compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws or contained in any regulation, code, plan, decree, judgment, notice or demand letter issued, entered, promulgated or approved thereunder.

Each party shall take actions to protect the environment and prevent environmental pollution. Waste shall be properly processed in compliance with relevant Environmental Laws and each party shall be responsible for complying with such Environmental Laws and shall fully indemnify the other party with respect to any claim, liability or obligation arising with such indemnifying party's failure to comply with the relevant Environmental Laws.

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§ 24 Anti Corruption

By accepting the Contract including these General Terms and Conditions the Vendor represents that its business including the conduct of all its officers, directors, managers, employees, servants and agents is governed by the highest standards of honesty, integrity and fair dealing. The Vendor represents that its business runs under compliance with all nationally and internationally applicable, respectively, publicly recognized rules, regulations and standards to prevent corruption and illegal acts. The Purchaser reserves the right to hold the Vendor liable to legal extents and to immediately terminate the Contract and the complete business relation with the Vendor, in the event that the Vendor becomes subject to legal investigation or prosecution related to the above representations.

§ 25 Insurance

Vendor shall at its cost and expense maintain with a reputable insurance company insurance covering the price for the goods subject to the delivery term based on Incoterms 2010 as stated in the Contract. The Vendor shall (without in any way limiting his responsibilities or liabilities under the Contract) maintain at its own expense following insurances providing sufficient coverage as can be reasonably expected in the plant construction and heavy machine industry:

- public and products liability insurance \$ 2,000,000;
- employer's liability insurance \$ 1,000,000;
- professional indemnity insurance for non-proprietary equipment/performance \$ 5,000,000;
- comprehensive general liability insurance \$ 5,000,000;
- automobile liability insurance \$ 1,000,000;
- worker's compensation insurance \$ 1,000,000; and
- employer's liability insurance \$ 1,000,000 or statutory minimum, whichever is higher.

All of said insurance shall be in form reasonably satisfactory to Purchaser with insurance companies lawfully authorized to do business in the jurisdiction in which the Supplies are to be shipped. All coverage shall be procured with carriers having an A.M. Best Rating of A-VII or better. If the Vendor fails to obtain or maintain any insurance coverage required under this Contract, Purchaser may purchase such coverage and charge the expense to the Vendor, or terminate this Contract. Each insurance policy required under this Section shall provide that such policy will not be subject to cancellation, termination or change except after prior written notice to Purchaser as follows. Each insurance policy required under this Section shall contain a provision that the insurance company or its designee must give Purchaser written notice transmitted in paper or electronic format: (a) at least 30 Days before coverage is nonrenewed by the insurance company, (b) at least 30 Days before there is any material reduction in coverage, and (c) within 10 Business Days before cancellation of coverage by the insurance company. Prior to providing materials, equipment, and incidental services under this Contract and annually thereafter, and upon renewal or replacement of the insurance policies, the Vendor shall furnish Purchaser with a complete copy of each insurance policy together with the corresponding certificates of insurance until one year after providing materials, equipment, and incidental services under this Contract or longer if otherwise required by any document made a part of this Contract. In addition, if any insurance policy required under this Section is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Vendor shall give Purchaser prompt written notice upon actual or constructive knowledge of such condition. Each insurance policy required under the Section shall contain an endorsement providing that the coverage afforded thereby shall be primary, noncontributory coverage to the full limit of

liability, and that should Purchaser have other insurance against the loss covered by said policy, such other insurance shall be excess insurance over the primary, noncontributory insurance of Vendor. The insurance policies shall name Purchaser as an additional insured.

§ 26 Termination

Without prejudice to any other rights or remedies and subject to undertaking the remediation procedure as described hereafter, either party shall be entitled to terminate this Contract immediately by written notice to the other party, in case:

- (i) The other party is in breach of any of its obligations under this Contract and the party in default has failed to commence to remedy such breach within 14 days of a notice having been served by the first party specifying the breach and requiring its rectification or such defaulting party thereafter fails to promptly and diligently carry out such remedy (or to complete such remedy within 60 days after the date of the notice);
- (ii) The Vendor is in material default of its obligations in respect of the Contract, Purchaser shall give Vendor written notice and Vendor shall promptly, within 24 hours, begin action and will cure the default within 10 days, if feasible, or if completion of such cure is not feasible within such 10 day period, Vendor shall promptly and diligently carry out such cure to completion within a reasonable amount of time. If Vendor fails to cure such default, Purchaser may terminate such Contract in whole or in part, and Purchaser shall be entitled to (i) purchase appropriate and adequate substitute Supplies from other sources, and (ii) claim any expenses, costs, or losses, etc. that might arise from such termination and substitute purchase, including, but not limited to, (a) the balance between original Contract price and the re-procurement price of substitute Supplies, (b) the balance between initial freight costs and new freight costs from the location of the substitute Supplies, (c) any other disparity of Purchaser's expenses compared between the terminated original Supplies and the substitute Supplies, and (d) all such expenses, costs, and losses that third-parties claim from Purchaser as a consequence of the termination (e.g., Purchaser might have to pay late delivery damages to end-customers, etc.). Without prejudice to any other rights or remedies, either party shall be entitled to terminate this Contract immediately on written notice upon the occurrence of any of the following events:
- (iii) A petition is presented or proceedings are commenced or an effective resolution is passed for the winding-up, insolvency, judicial management, dissolution or bankruptcy of the other party, or a petition is presented or proceedings are commenced or an effective resolution is passed for the appointment of a liquidator, receiver, administrator, trustee, judicial manager or similar officer of the other party, or
- (iv) The other party ceases, or threatens to cease, to carry on its business or any substantial part thereof or the other party is subject to a change of ownership of its shares resulting in 50% or more of the issued share capital of the company becoming legally or beneficially the property of a new owner, unless such new owner is an existing parent company or affiliate of the party which presently owns the party to this Contract which is subject to the change of ownership.

§ 27 INDEMNITY

THE VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE PURCHASER, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, REPRESENTATIVES, SUCCESSORS, AFFILIATES, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, AND ASSIGNS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, PENALTIES, FINES, LOSSES, COSTS, OR OTHER LIABILITIES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY OR DEATH OF PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY

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OF THIRD PARTIES, CLAIMS FOR WRONGFUL DEATH, AND ALL RELATED LEGAL FEES, INCLUDING TO ENFORCE THIS INDEMNIFICATION, ETC. (COLLECTIVELY "LOSSES"), TO THE EXTENT DIRECTLY CAUSED BY VENDOR'S NEGLIGENT ACTS OR OMISSIONS OR WILFUL MISCONDUCT IN VENDOR'S PERFORMANCE OF THIS CONTRACT. VENDOR'S OBLIGATIONS UNDER THIS PARAGRAPH SHALL EXTEND TO THE ACTS OR OMISSIONS OF ITS OFFICERS, DIRECTORS, SHAREHOLDERS, REPRESENTATIVES, SUCCESSORS, AFFILIATES, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, AND ASSIGNS. VENDOR SHALL DEFEND, INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS EXPENSE, PURCHASER (INCLUDING ITS OFFICERS, DIRECTORS, SHAREHOLDERS, REPRESENTATIVES, SUCCESSORS, AFFILIATES, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, AND ASSIGNS) AGAINST ANY LOSS, COST, EXPENSE OR LIABILITY (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES AND AWARDED DAMAGES) ARISING OUT OF A CLAIM THAT THE SUPPLIES, OR PART THEREOF, SOLD UNDER THE CONTRACT, OR THE POSSESSION AND/OR USE AND/OR ENJOYMENT THEREOF, INFRINGES A PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, INTELLECTUAL PROPERTY RIGHTS, OR OTHER RIGHTS A THIRD PARTY MIGHT HAVE TO THIS OR A SIMILAR EFFECT.

§ 28 LIMITATION OF LIABILITY

THE PARTIES EXPRESSLY AGREE THAT PURCHASER'S OBLIGATIONS AND LIABILITIES AS PROVIDED FOR IN THE CONTRACT AND THESE GENERAL TERMS AND CONDITIONS SHALL ALONE GOVERN PURCHASER'S OBLIGATIONS AND LIABILITIES. ACCORDINGLY, THE REMEDIES PROVIDED UNDER THE CONTRACT IN RESPECT OF OR IN CONSEQUENCE OF ANY BREACH OF CONTRACT, ANY NEGLIGENT ACT OR OMISSION, DEATH OR PERSONAL INJURY OR LOSS OF OR DAMAGE TO ANY PROPERTY SHALL BE COMPREHENSIVE, CONCLUSIVE AND TO THE EXCLUSION OF ANY OTHER REMEDY THAT THE VENDOR MAY HAVE AGAINST THE PURCHASER UNDER THE LAW GOVERNING THE CONTRACT, SAVE IN THE CASE OF FRAUD, FRAUDULENT ACTS, WILFUL MISCONDUCT, OR ILLEGAL ACTS BY THE PURCHASER. THE PURCHASER SHALL NOT BE HELD LIABLE FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF PROFIT, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF PRODUCTION, OR FOR ANY FINANCIAL OR ECONOMIC LOSS, WHATSOEVER, THAT MAY BE SUFFERED BY THE VENDOR, SAVE IN THE CASE OF FRAUD, FRAUDULENT ACTS, WILFUL MISCONDUCT, OR ILLEGAL ACTS BY THE PURCHASER. THE PURCHASER'S TOTAL LIABILITY UNDER THE CONTRACT, INCLUDING BUT NOT LIMITED TO LOSSES, INDEMNITIES, WARRANTIES AND REPRESENTATIONS, CLAIMS, STRICT LIABILITY, BREACH OF CONTRACT, DELAYED PERFORMANCE DAMAGES, LIQUIDATED DAMAGES, DAMAGE TO VENDOR'S PROPERTY, TERMINATION AND/OR CANCELLATION OF CONTRACT, LAWSUITS (INCLUDING ATTORNEY FEES), TORT AND/OR ANY OTHER RIGHTS OR CLAIMS UNDER CONTRACT, LAW, EQUITY OR OTHERWISE, SHALL BE LIMITED TO 10% OF THE CONTRACT VALUE, SAVE IN THE CASE OF FRAUD, FRAUDULENT ACTS, WILFUL MISCONDUCT OR ILLEGAL ACTS BY THE PURCHASER. THE TERMS AND CONDITIONS OF THIS LIMITATION OF LIABILITY CLAUSE SHALL SURVIVE ANY TERMINATION OF THE CONTRACT.

Governing Law

The validity, interpretation, construction, performance and termination of the Contract shall be governed by the state laws of Georgia. Arbitrators shall apply the laws of Georgia to the resolution of any dispute without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction and without giving effect to the United Nations Convention on Contracts for the International Sales of Goods, April 11, 1980. For dispute settlement, the Purchaser has the right to choose another state's or country's law in lieu of the state laws of Georgia if the Supplies were shipped to such other state or country and arbitrators shall apply such chosen law accordingly without giving effect to any choice of law rule which may direct application of the laws of any other jurisdiction and without giving effect to the United Nations Convention on Contracts for the International Sales of Goods, April 11, 1980.

§ 29 Dispute Resolution

A party ("Complaining Party") that believes that the other (the "Responding Party") is in breach of this agreement in any particular, shall deliver written notification to the Responding Party, setting forth in reasonable detail the breach for which the Complaining Party seeks redress, along with a specific request for relief. The Responding Party shall acknowledge receipt of the aforementioned notification in writing within 5 days and shall furnish a written reply detailing steps to resolve the matter within 10 additional calendar days. Upon receipt of the reply, the Complaining Party shall provide written notice to the Responding Party either that the dispute has been resolved satisfactorily or that the Complaining Party is invoking the escalation procedure set forth in this section within 5 days. In the event that the parties are unable to resolve a dispute in the manner described in this section, each party agrees to designate a single representative to attempt to resolve the dispute via good faith direct discussions. Each party's representative shall have all necessary authority to bind the party contractually and to resolve the dispute. The designated representatives shall meet in an effort to resolve the dispute. If, after reasonable efforts to reach an amicable resolution, either party believes an impasse has been reached, it may elect to refer the dispute to mediation in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") including any applicable supplementary procedures for International Commercial Mediation. Each party shall be responsible for one-half of all costs and fees assessed by or through the AAA (including mediator fees). If, after reasonable efforts to mediate the dispute, either party or the mediator declares in writing that an impasse has been reached, or if neither party elects to refer the dispute to mediation within 90 days following the commencement of the parties' good faith direct discussions, the dispute shall be submitted to, and determined by, binding arbitration under the Commercial Arbitration Rules of the AAA, including the Supplementary Procedures for International Commercial Arbitration. The arbitrator shall have no right to change, add to or subtract from any of the provisions of this Contract, shall not extend its authority where specifically limited herein and shall not exceed any limitations provided in this Contract. Any award rendered in such proceedings shall be final and binding on the parties thereto, and judgment may be entered thereon in any court having jurisdiction thereof, including the state and federal courts in Georgia. The arbitration shall be conducted by a single arbitrator, appointed by the parties or, failing agreement, appointed by the AAA. The arbitration shall be held in Atlanta, Georgia, in the English language. The award shall be final and there shall be no right of appeal. The arbitrator shall have the power to award costs including the costs of the arbitration. Each of the parties hereby irrevocably submits to the exclusive jurisdiction of any arbitration panel, ap-

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pointed as provided above and sitting in Atlanta, Georgia. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of arbitration, as described above, in Atlanta, Georgia.

Any arbitration award rendered pursuant to this clause shall be final and binding on the parties and shall not be subject to appeal, and shall be enforceable in any court of competent jurisdiction.

§ 30 Miscellaneous

No waiver by Purchaser of any of the provisions of this Contract is effective unless explicitly set forth in writing and signed by Purchaser. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract 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.

In case of absence, ambiguity, contradiction and/or doubt, the terms and conditions set out in the Purchase Order prevail over these General Terms and Conditions.

If one or more provisions of this Contract and these General Terms and Conditions are held to be ineffective, unenforceable or illegal under the applicable law, the Parties agree to renegotiate such provision in good faith. In the event that the Parties cannot reach a mutually agreeable, effective, enforceable and legal substitution for such provision, then (i) such provision shall be excluded from this Contract and these General Terms and Conditions, (ii) the balance of the Contract and these General Terms and Conditions shall be interpreted as if such provision was so excluded and (iii) the balance of the Contract and these General Terms and Conditions shall remain effective, enforceable and legal in accordance with its terms.