



1701 East Market Street, Jeffersonville IN 47130-4717

STANDARD TERMS AND CONDITIONS – GOODS

1. General. These Terms and Conditions (“Terms”) are part of, and incorporated into, each purchase order, price confirmation or other similar document (the “Order”) between American Commercial Barge Line LLC, ACBL Transportation Services LLC or their affiliates (“ACBL”) and Seller (as identified by name on the Order) providing for the purchase and sale of goods, raw materials, equipment, general stores, spare parts, personal property and related items (“Items”). The manufacture, sale, shipment, and delivery of Items by Seller will be subject only to and governed exclusively by these Terms. SELLER’S ACCEPTANCE OF AN ORDER IS EXPRESSLY LIMITED TO THE TERMS CONTAINED HEREIN. Any action by Seller, including fulfillment of an Order or shipment of Items, shall be deemed Seller’s conclusive acceptance of these Terms. THE ACCEPTANCE BY ACBL OF ANY PROPOSAL OR QUOTE MADE BY SELLER IS EXPRESSLY CONDITIONAL UPON SELLER’S ASSENT TO THESE TERMS. Any additional or different terms or conditions contained in any quote, acknowledgment, invoice or other form of the Seller are not part of the Order and to the extent they purport to be proposals or counteroffers they are hereby expressly rejected.

2. Price. ACBL’s order shall be filled at the price specified on the Order. The price on the Order shall include packaging, labeling, boxing and crating, shipping and cost, insurance and freight (CIF) to FOB location. Seller warrants that prices shown on the Order are complete, and that no additional charges of any type will be added without ACBL’s express written consent. Seller warrants that the prices for the Items sold to ACBL hereunder are no less favorable than Seller currently extends to any other customer for the same or similar goods in similar quantities. If Seller reduces its prices to others for the same or similar goods during the term of an Order, Seller will reduce the prices to ACBL for such goods correspondingly.

3. Exclusivity. This is not an exclusive agreement. ACBL may buy or acquire Items from other sources or reduce quantities purchased or acquired from Seller irrespective of the course of dealing between the Parties.

4. Delivery. Deliveries of Items are to be made at the time and the place specified in the Order (the “Delivery Schedule”). Time is of the essence. 100% ON-TIME DELIVERY IS REQUIRED. Unless otherwise provided on the Order, transportation of Items will be free on board (FOB) to ACBL’s facility as identified on the Order. Seller will bear all risk and costs of delivering the goods, including shipping and insurance charges, duties, taxes and other charges. Title to and risk of loss for the Items will pass to ACBL only upon delivery. If Seller fails to deliver any shipment in accordance with the Delivery Schedule, ACBL may, at its option, cancel the shipment, accept partial or delayed delivery, and/or purchase substitute goods, and Seller will reimburse ACBL for its incremental costs in procuring any substitute goods and for any costs or losses ACBL incurs due to such delivery failure.

5. Inspection. All Items shall be received subject to ACBL’s inspection, approval, count and/or testing (“Inspection”). ACBL shall have a reasonable time after receipt of Items to conduct an Inspection. ACBL may reject any Item(s) that are, in ACBL’s sole judgment, nonconforming. ACBL shall pay all costs of Inspection but may recover such costs from Seller if the Item(s) do not conform and are rejected. Actual delivery, Inspection and acknowledgement of conformance shall constitute acceptance by ACBL. Payment for Items provided under an Order shall not constitute ACBL’s acceptance of the Item(s). Acceptance by ACBL of any part of the Item(s) covered by an Order shall be without prejudice to ACBL’s right to reject any other Item(s) if, in ACBL’s sole judgment, such Item(s) are nonconforming. If ACBL rejects any Items, ACBL may, in its sole discretion and without prejudice to any rights or remedies: (a) return such rejected goods to Seller at Seller’s risk and expense (including all freight charges) for replacement or repair; (b) return all or any part of the Items delivered for full credit of the purchase price; (c) retain the rejected Item(s) and repair such Items at Seller’s expense; or (d) consider the Order breached and terminated for cause. Seller assumes risk of loss until ACBL’s acceptance. Failure by ACBL to inspect or test the Item(s) shall not affect Seller’s obligations, including warranties.

6. Cancellation. ACBL may at its option immediately cancel for convenience all or any part of an Order, at any time and for any reason; provided, ACBL shall pay to Seller the following amounts without duplication: (a) the order price for all Items which have been delivered in accordance with an Order and not previously paid for; and (b) the actual cost of work-in-progress and raw materials incurred by Seller in furnishing the Items under an Order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of any Order less,

however, the scrap or resale value of any raw material or work-in-progress. ACBL will make no payments for finished Items, work in progress or raw materials fabricated or procured by Seller in amounts in excess of those authorized in an Order nor for any undelivered Items which are in Seller's standard stock which are readily marketable. Payments made under this Section shall not exceed the aggregate price payment by ACBL for finished Items which would be produced by Seller under the Delivery Schedule outstanding at the date of termination.

7. Payment Terms. Each invoice submitted by Seller must be provided to ACBL within ninety (90) days of delivery of Items and must reference the applicable Order number. Unless otherwise provided on the Order, all undisputed payments shall be made forty-five (45) days after receipt of correct invoice. ACBL will be entitled to a 5% discount of the invoiced amount for all invoices that are submitted more than ninety (90) days after delivery of Items. ACBL shall not be required to make payments for Items delivered to ACBL which are in excess of quantities specified in the Order. If any Items are delivered in advance of schedule, ACBL may retain such Items and invoice Seller for any resulting handling and storage costs. ACBL will not process invoices for Items shipped in advance of schedule until the scheduled delivery date.

8. Warranties. Seller warrants that all Items provided will be new and will not be used or refurbished unless explicitly authorized on the Order. Seller hereby agrees that it will make spare parts available to ACBL for a period of at least five (5) years from the date of shipment. Seller warrants its title to the Items, its right to transfer such goods and that such goods are free of any security interest, lien or encumbrance. Seller warrants that unless more stringent specifications are provided by ACBL in the Order, all Items will comply with American standards (including but not limited to, ANSI, Purchase Order ASME, ASTM and NEMA). Seller expressly warrants that all Items shall conform to the Order (including any samples, drawings, models, specifications or other descriptions provided to ACBL) and to any representation or promises made by Seller; shall be fit and sufficient for the purpose intended; shall be merchantable, of good material and workmanship and free from defects; and Seller warrants that the Item's design will be free from defect in design. This warranty shall run to ACBL, its successors, affiliates, assigns and users of the Items. Notwithstanding Seller's standard warranty, all warranties shall extend for a minimum period of eighteen (18) months from receipt by ACBL or twelve (12) months after the Items are applied to their intended use, whichever is later. Seller shall, at ACBL's option, repair or replace any defective Items or parts at no cost to ACBL or refund the purchase price in full. Replacement parts are included in the definition of Items for purposes of the warranty and other provisions hereunder. The foregoing warranties shall survive ACBL's Inspection, acceptance and use of the Items. In addition to the foregoing, Seller hereby extends to ACBL any and all warranties received from Seller's subcontractors or suppliers and agrees to enforce such warranties on ACBL's behalf. The warranties contained herein shall be in addition to, and shall not be construed as restricting or limiting, any warranties or remedies of ACBL, express or implied, which are provided by contract or law.

9. Indemnification. Seller does hereby assume liability for, and does hereby agree to defend, indemnify, protect, save and keep harmless ACBL and its parent and affiliated companies, and its and their respective officers, directors, members, employees, agents and vessels ("ACBL Group") from and against any and all liabilities, obligations, losses, injuries (including death), damages, penalties, environmental response costs, claims, actions, suits, costs, property damage, natural resource damage, fines, assessments, filing fees or other official fees, and expenses (including attorneys' fees), of any kind and nature imposed on, incurred by, or asserted against ACBL Group, whether or not involving a third party claim, arising out of or related to (a) any failure of Items to comply with applicable specifications (functional, design or otherwise), warranties, or certifications; (b) the negligence of Seller in design, manufacture or otherwise with respect to Items or parts therefore; (c) claims based on strict or product liability relating to Items; (d) failure to warn or inadequate warnings or instructions, or (e) failure of Items to perform in accordance with their intended use; or (f) infringement or contributory infringement or inducement to infringe any United States or foreign trademark or patent or copyright by reason of the manufacture, use or sale of the Items ordered. ACBL reserves the right to settle all third-party claims at its own expense, but such settlement shall not relieve Seller from any of its liabilities hereunder for indemnification.

10. Insurance. Seller shall procure, maintain, and keep in effect, at its own expense, the following insurance: (i) General Liability Insurance (including without limitation, Broad Form Contractual Liability, Premises and Operations, Products and Completed Operations, and Sudden & Accidental Pollution) in an amount not less than \$1,000,000 per occurrence; (ii) Workers' Compensation Insurance (including Longshore and Harbor Workers' Compensation, if applicable) to the statutory limits required by law which policies shall contain the Alternate Employer Endorsement, (iii) Employers' Liability Insurance in an amount not less than \$1,000,000; (iii) Automobile Liability Insurance covering all owned autos, all non-owned autos, and all hired autos, with a minimum combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence; and (iv) if providing professional services, professional liability/errors and omissions liability coverage with limits of not less than \$1,000,000 per occurrence/\$3,000,000 in the annual aggregate. The policies obtained must be occurrence based and shall cover the actions of any subcontractor that Seller may utilize. The insurance policies listed above (with the exception of Workers' Compensation) shall name ACBL and its affiliates as additional insureds. All policies shall contain a full waiver of subrogation in favor of ACBL and its affiliates. The insurance policies required above shall each constitute primary insurance coverage to any

insurance already in place by ACBL. Seller shall provide ACBL with certificates of insurance confirming that the foregoing insurance policies are in full force and effect, upon request by ACBL. Seller shall ensure that any subcontractor or supplier will maintain in full force and effect, liability insurance with limits at least equal to those set forth in this Section 10, including the naming of ACBL and its affiliates as an additional insured with a full waiver of subrogation.

11. Intellectual Property Rights and Confidential Information. (a) No knowledge or information disclosed to ACBL by Seller which in any way relates to Items, shall, unless otherwise specifically agreed in writing by ACBL, be deemed to be confidential or proprietary information, and ACBL shall acquire all such knowledge and information free from any restrictions (subject to Seller's patent rights), as part of the consideration for the Order. (b) Any and all technical and other knowledge or information obtained or learned by Seller as a result of this buyer/seller relationship and all technical and other information furnished by ACBL or jointly developed by ACBL and Seller (collectively, "Confidential Information") shall remain ACBL's property and Seller shall maintain in confidence and safeguard all Confidential Information. Seller agrees to use any Confidential Information only for conducting business with ACBL in accordance with an Order. (c) Seller warrants and represents that all Items, and their sale, performance, use or disposal will not infringe upon any U.S. or foreign patent, copyright or trademark or otherwise infringe upon any right of any third party. (d) Any work or authorship created by Seller or its employees which is ordered or commissioned by ACBL, or is a necessary part of the performance of Seller under the Order, will be considered a work made for hire and all copyrights for such work shall belong to ACBL. To the extent that any such work or authorship does not qualify as a work made for hire, Seller assigns all right, title, and interest in all copyrights and moral rights in such work or authorship to ACBL. (e) With respect to any intellectual property, including software, contained in and which forms a part of the Items manufactured or supplied to ACBL, or any intellectual property necessary to repair or modify any Item under any Order, Seller grants to ACBL a permanent, nonexclusive, royalty free, worldwide license, with rights to grant sublicenses to any affiliated or third party.

12. Product Recall. If at any time (a) any governmental agency having jurisdiction provides written notice to either ACBL or Seller, or (b) either ACBL or Seller have a reasonable basis to conclude that any Item(s) contain a defect which could create a potential safety hazard or unsafe condition, pose an unreasonable risk of serious injury or death, contain a quality or performance deficiency, or are not in compliance with any applicable code, standard or legal requirement, thereby making it advisable, or required, that such Item(s) be recalled and/or repaired, ACBL or Seller will promptly communicate relevant facts to each other. ACBL shall determine whether a recall of the affected Items is warranted or advisable unless notice to that effect has been received from any governmental agency having jurisdiction. If a recall is required under the law or ACBL determines that it is advisable, Seller shall promptly undertake corrective actions, including those required by any applicable consumer protection or similar law and the regulations thereunder, and shall file all necessary papers, descriptions or corrective action programs, and other related documents and carry out correction action programs.

ACBL shall cooperate with and assist Seller in any such filings and corrective action; provided, however, that nothing contained in this Section shall preclude ACBL from taking such action, and in such event, Seller shall cooperate with and assist ACBL in any such filings and corrective action it elects to undertake. To the extent such recall or rework is determined to have been caused by a defect or quality or performance deficiency which is the responsibility of Seller, at ACBL's election, Seller shall perform all necessary repairs or modifications at its sole expense, or ACBL shall perform such necessary repairs or modifications and Seller shall reimburse ACBL for all costs and expenses incurred by ACBL in connection therewith. In either case, Seller shall reimburse ACBL for all costs and expenses incurred by ACBL in connection with any such (voluntary or required) recall, repair, replacement or refund program, including without limitation, the cost of locating, identifying Items, the cost of repairing, or where repair of the Item is impracticable or impossible, repurchasing or replacing the recalled Items, and cost of packing and shipping the recalled Items, and the cost of media notifications, if such form of notification is needed.

13. Allocation. If Seller is unable, at any time, to supply the entire quantity of Items ordered by ACBL, Seller will meet all of ACBL's requirements before making any allocation among its other customers under Section 2-615 of the Uniform Commercial Code or its equivalent.

14. Set-Off. ACBL shall have the right at all times to set off any amounts owing at any time from Seller to ACBL, against any amounts payable at any time by ACBL to Seller.

15. Subcontracting. The parties recognize that the nature of the work of Seller may require Seller to procure materials and services from third parties; however, should Seller elect to subcontract any work under an Order, it shall subcontract only after obtaining ACBL's prior written consent. Any consent so granted by ACBL shall not relieve Seller of its obligations hereunder.

16. Compliance with Laws. Seller agrees, warrants and represents that it will comply with all Federal, state and local laws and regulations with respect to the Items to be provided. Seller agrees to provide equal employment opportunity for its employees and applicants without regard to race, color, religion, sex, age, national origin, veteran status, disability, or other protected class or activity under federal, state or local law.

17. Limitation of Liability. The maximum aggregate liability of ACBL in contract, tort (including negligence and breach of statutory duty) or otherwise for breach of these Terms or any matter arising out of or in connection with any Order shall not exceed the total purchase price as provided in the Order. IN NO EVENT SHALL ACBL BE LIABLE FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGE, LOST PROFITS, OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LAW, EVEN IF ACBL SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

18. Termination for Breach; Insolvency. ACBL may immediately cancel any Order without liability to Seller in the event of the happening of any of the following or any other comparable event: (a) insolvency of the Seller, (b) filing of a voluntary petition in bankruptcy by Seller, (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller; (3) execution of an assignment for the benefit of creditors by Seller, provided that such petition or assignment is not vacated or nullified within fifteen (15) days of such event, or (f) Seller fails or refuses to furnish ACBL promptly with such information and assurances as ACBL may request, from time to time, about Seller's financial and operating conditions and ability to supply Items under an Order. ACBL further reserves the right to cancel all or any part of an Order, without liability to Seller, if Seller (a) repudiates or breaches any of the these Terms or the terms of an Order, including Seller's warranties; (b) fails to deliver Items in accordance with the Delivery Schedule; (c) fails to make progress so as to endanger timely and proper delivery of Items; and does not correct such failure or breach within ten (10) days (or such shorter period of time, if commercially reasonable under the circumstances) after receipt of written notice from ACBL specifying such failure or breach.

19. Independent Contractor; Advertising. Seller is an independent contractor. Seller shall have no authority to make any commitment on behalf of ACBL. Seller shall not use the name, trademarks, logos or copyrights of ACBL in its sales, promotion, advertising, press releases or any other publications or public disclosure (including releases to existing or prospective customers) without explicit written permission of ACBL, except as required by law.

20. No Implied Waiver. Governing Law. These Terms and the Order will be interpreted and enforced under the laws of the State of Indiana, without recourse to the conflict of laws provisions thereof, or, if applicable, the general maritime laws of the United States. The parties agree that any action or proceeding arising out of or in connection with this contract will be brought exclusively in the U.S. District Court for the Southern District of Indiana, or if such court does not have jurisdiction, then in the Indiana State Courts located in Clark County, and Supplier expressly consents to personal jurisdiction in such courts. No presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions hereof. Except as modified by these Terms, any Order issued by ACBL shall be governed by the Uniform Commercial Code provisions applicable to transactions in goods as enacted by the State of Indiana ("UCC"), regardless of whether the Order is characterized as a transaction in goods or a transaction in services. The U.N. Convention on the International Sales of Goods shall not apply. The parties have agreed and it is their intent that the battle of the forms section of UCC 2-207 shall not apply to any Order or to any invoice or acceptance form of Seller relating to the Order. The parties intend that these Terms shall exclusively control the relationship of the parties with respect to all Items being purchased pursuant to the Order.

21. Miscellaneous. These Terms along with the applicable Order constitutes the final, complete and exclusive statement of the agreement between ACBL and Seller and may only be amended or modified by a written agreement signed by both ACBL and Seller. If any provisions of these Terms shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect. The failure of ACBL at any time to require performance by Seller of any provision of the Order or these Terms shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of ACBL of a breach of any provisions of any Order or these Terms constitute a waiver of any succeeding breach of the same or any other provision.