

SIMMONS PUMP & SUPPLY, LLC
Terms and Conditions

Simmons Pump & Supply, LLC, is herein referred to as the "Seller" and the customer purchasing goods ("Goods") from the Seller is referred to as the "Buyer." The Terms and Conditions as set forth herein, and the Seller's quotation, estimate or bid to Buyer, shall collectively and exclusively govern all of the rights, duties and obligations of Seller and Buyer related to Buyer's purchase order for the Goods Seller is agreeing to sell to Buyer. Any terms and conditions set forth in Buyer's purchase order which are different or inconsistent with Seller's Terms and Conditions and/or Seller's quotation, estimate or bid, shall be null and void. Buyer's receipt of the Goods, and/or payment, or partial payment, to Seller for the Goods being sold to Buyer, shall evidence Buyer's acceptance of the terms and conditions of the sale as set forth herein. Seller reserves the right, in its sole discretion, to refuse any purchase order.

1. PRICES: Prices for Goods shall apply to the specific quantities stated in Seller's quotation, estimate or bid. Prices shall include standard packing according to Seller's specification for packing and delivery. All costs and taxes for special packing requests by Buyer, including packing for exports, shall be paid by Buyer as an additional charge. Prices for Goods are subject to change without notice based on any subsequent changes in the cost to Seller for sub-supplier materials, supplies or other related increases, and the adjusted price will be based on the cost to Seller in effect at the time of the requested shipment date, and each shipment will be invoiced at such increased price. All prices for Goods are exclusive of, and do not include, any applicable sales, use, excise, GST, VAT or similar taxes, duties or levies, or transportation or insurance costs, and all such costs are the sole responsibility of, and shall be paid by, Buyer.

2. TAXES: Any current or future tax or government charge, or increase in same, affecting Seller's costs of production, sales, delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use of consumption of Goods, shall be paid by Buyer and shall either be added to the purchase price of the Goods or billed to Buyer separately, at Seller's election.

3. ARBITRATION: Seller and Buyer agree that any controversy or claim, excluding collections and past due accounts, arising out of or relating to the agreed terms as provided herein to sell Goods, or the breach thereof, shall be submitted to mandatory arbitration in accordance with the Texas Arbitration Act, and the arbitration award or dispositive order, shall be final and binding and may be entered in any court of competent jurisdiction in the State of Texas. The exclusive place of arbitration shall be within Lubbock County, Texas, and the parties hereby submit to such jurisdiction and venue. Collections and past due accounts may be filed in the appropriate court located in Lubbock County, Texas, and Buyer hereby submits to the exclusive jurisdiction and venue in Lubbock County, Texas.

4. TERMS OF PAYMENT: Seller reserves the right to require payment in advance or C.O.D., and otherwise modify credit terms should Buyer's credit standing not meet Seller's credit requirements. Unless otherwise specified in writing by Seller, the terms of payment are net thirty (30) days from the date of Seller's invoice to be paid in U.S. currency. All credit sales are subject to prior approval by Seller. Seller, at its option, require copies of pertinent contracts, financial statements and other documents relative to any given sale of Goods in order to evaluate and determine, in its sole discretion, Buyer's credit status or the credit status of any third party with whom Buyer has a contractual relationship concerning the Goods to be furnished to Buyer. Failure or delay in delivery of this information will postpone production and delivery of Goods, and may result in a price increase. In the event payment is not made when due, Buyer agrees to pay Seller a service or finance charge of the lesser of: (i) one and one-half percent (1.5%) per month (18% per annum); or (ii) the highest rate permitted by applicable law, on the unpaid balance of the invoice from and after the invoice due date. Buyer shall be responsible for all costs and expenses associated with any checks returned due to insufficient funds. If, during the performance hereunder with Buyer, the financial responsibility or condition of Buyer is such that Seller in good faith deems itself insecure, or if Buyer becomes insolvent, or if a material change in the ownership of Buyer occurs, or if Buyer fails to make any payments in accordance with the terms as provided herein, then, in any such event, Seller is not obligated to continue performance under the agreed terms as provided herein, and may stop Goods in transit and defer or decline to make delivery of Goods, except upon receipt of satisfactory security or cash payments in advance, or Seller may terminate Buyer's purchase order upon written notice to Buyer without further obligation to Buyer whatsoever. Payment by Buyer to Seller shall not be conditioned upon Buyer receiving payment from any third party.

5. Quotation, (Estimate or Bid), Withdrawal, Expiration. Quotations, estimates or bids are valid for thirty (30) calendar days from the date of issuance, unless otherwise provided therein. Seller reserves the right to cancel or withdraw any quotation, estimate or bid at any time, with or without notice or cause, prior to acceptance by Buyer. There is no agreement if any conditions specified within the quotation, estimate or bid are not completed by Buyer to Seller's satisfaction within thirty (30) calendar days of Seller's written acknowledgement of a purchase order by Buyer. Seller, nevertheless, reserves its right to accept any contractual documents received from Buyer after this 30-day period.

6. SELLER'S RIGHTS IN DEFAULT: In the event Buyer fails to make any payment when due, Seller shall have the right, among other remedies, either to terminate its agreement with Buyer, or suspend further performances under the agreed terms as provided herein and/or any other agreements with Buyer. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. Additionally, upon any payment default by Buyer, Buyer shall immediately pay to Seller the entire unpaid amounts for any and all shipments made to Buyer irrespective of the terms of said shipment and whether said shipments are made pursuant to the agreed terms as provided herein, or any other agreement between Seller and Buyer, and Seller may also withhold all subsequent shipments until the full amount due is paid by Buyer. Acceptance by Seller of less than full payment shall not be a waiver of any of its rights hereunder. Buyer shall not assign or transfer its rights, duties or obligations, or any interest in it, or monies payable under it, without the written consent of Seller, and any assignment made without such written consent shall be null and void.

7. SHIPMENT AND DELIVERY: While Seller will use all responsible commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are proximate and not guaranteed. Shipment dates are best, estimates only at the time of the proposal, and are subject to change based on manufacturing load and sub-supplier schedules at Seller's date of order and/or full release to manufacture. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods postponed or delayed by Buyer for any reason. Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Risk of loss and legal title to the Goods shall transfer to Buyer for sales in which the end destination of the Goods is outside the United States immediately after the Goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss for damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by a carrier at Seller's shipping point. All shipments are F.O.B. Seller's shipping point. Any claims for shortages or damages suffered in transit are the responsibility of the Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery. Seller is not responsible for any such shortages or loss. Seller shall not be responsible to Buyer for any loss, whether direct, indirect, incidental or consequential in nature, including without limitation loss of profits or liquidated damages, arising out of or relating to any failure of the Goods to be delivered by the specified delivery date. In the absence of specific instructions, Seller will select the carrier. Buyer shall reimburse Seller for the additional cost of its performance resulting from inaccurate or lack of delivery instructions, or by any act or omission on Buyer's part. Any such additional cost may include, but is not limited to, storage, insurance, protection, re-inspection and delivery expenses. Buyer further agrees that any payment due on delivery shall also be made if the Goods are delivered into storage as though the Goods had been delivered in accordance with the purchase order. Buyer grants to Seller a continuing security interest in and a lien upon the Goods and the proceeds thereof (including insurance proceeds), as security for the payment of all such amounts and the performance by Buyer of all of its obligations to Seller pursuant to this the agreed terms as provided herein and all such other sales, and Buyer shall have no right to sell, encumber or dispose of the Goods. Buyer shall execute any and all financing statements and other documents and instruments and do and perform any and all other acts and things which Seller may consider necessary, desirable or appropriate to establish, perfect or protect Seller's title, security interest and lien. In addition, Buyer authorizes Seller and its agents and employees to execute any and all such documents and instruments, and do and perform any and all such acts and things, at Buyer's expense, in Buyer's name and on its behalf related to its security interest in the Goods. Such documents and instruments may also be filed without the signature of Buyer to the extent permitted by law.

8. LIMITED WARRANTY: Subject to the limitations of Section 9, below, Seller warrants that the Goods manufactured by Seller will be free from defects in material and workmanship, and meet Seller's published specifications at the time of shipment

under normal use and regular service and maintenance, for a period of eighteen (18) months from the date of shipment of the Goods by Seller, or one year from start-up, whichever occurs first, unless otherwise specified by Seller in writing. Products and Special Coating Applications purchased by the Seller from a third party for resale to Buyer ("**Resale Products**") shall carry only the warranty extended by the original manufacturer or supplier. ANY ITEM OF THE PRODUCT(S) WHICH IS NOT MANUFACTURED OR APPLIED BY SELLER IS NOT WARRANTED BY SELLER and shall be covered only by the express warranty, if any, of the manufacturer or applicator thereof. **THE WARRANTY SET FORTH IN THIS SECTION 8 AND THE WARRANTY SET FORTH IN SECTION 9, BELOW, ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS, AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT THE PURPOSE OR USE HAD BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.** This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of the Seller. To the extent that Buyer, or its agents, has supplied specifications, information, representation of operating conditions or other conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, estimate or bid, or in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void. Equipment performance is not warranted unless separately agreed to in writing by the Seller. Seller manufactures engineered-to-order Goods based on the design point specified by the Buyer. Warranty on performance results will be based on laboratory tests performed at Seller's location. Due to the inaccuracies of field testing, if there are any conflicts between the results of field testing conducted and laboratory testing conducted, the laboratory tests results will control. Seller will not provide or furnish any equipment for field testing. (See Section 16) If within thirty (30) days after Buyer's discovery of any claimed warranty defects within the warranty period, and Buyer notifies Seller thereof in writing; Seller shall, at its option and as Buyer's exclusive remedy, repair, correct, replace or refund the purchase price for that portion of the Goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed absolute and unconditional waiver of Buyer's claims for such defects. Seller shall have the right to require the Buyer to deliver the Goods to Seller's, or its designee's, designated repair center or manufacturing facility. All responsibility and expenses associated with removal, dismantling, reinstallation and transportation to and from Seller's, or its designee's, designated repair center or manufacturing facility, and the time and expense of Seller's personnel and representatives for site travel and diagnosis under this warranty, shall be paid by Buyer. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period, or ninety (90) days from the shipment date that the Goods are returned to Buyer, whichever is longer. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of the Goods, whether alone or in combination with other products/components.

Buyer agrees to provide any subsequent transferee of the Goods conspicuous, written notice of Section 8 and 9 herein. Sections 8 and 9 shall apply to any entity or person who may buy, acquire or use the Goods, including any entity or person who obtains Goods from Buyer, and such entity or person shall be bound by the limitations as provided herein.

9. LIMITATION OF REMEDY AND LIABILITY: BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION, REPLACEMENT OR REFUND OF THE PURCHASE PRICE UNDER SECTION 8. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE, AND THE REMEDIES OF BUYER UNDER THE AGREED TERMS AS PROVIDED HEREIN ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, ANY OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR ANTICIPATED PROFITS, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS AND BUSINESS INTERRUPTION, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY, LOSS OF REPUTATION, AND/OR LOSS OR DAMAGE TO PROPERTY OR EQUIPMENT. THE FOREGOING LIMITATIONS OF LIABILITY SHALL BE EFFECTIVE WITHOUT REGARD TO SELLER'S ACTS OR OMISSIONS OR NEGLIGENCE OR STRICT LIABILITY IN THE PERFORMANCE OR NON-PERFORMANCE HEREUNDER. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or result obtained, and all such advice being given is accepted at Buyer's risk.

10. Buyer Warranty: Buyer warrants the accuracy of any and all information relating to the details of its operating conditions, including temperatures, pressures, and where applicable, the nature of all hazardous materials. Seller can justifiably rely upon the accuracy of Buyer's information in its performance. Should Buyer's information prove inaccurate, Buyer agrees to reimburse Seller for any losses, liabilities, damages and expenses that Seller may have incurred as a result of any inaccurate information provided by Buyer to Seller.

11. EXCUSE OF PERFORMANCE/FORCE MAJEURE: Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; flood; weather; natural disasters; terrorism; sabotage; strikes; labor disputes; civil disturbances or riots; currency restrictions; pandemics; disease; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation or in obtaining materials, fuel, power and energy; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performances may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any occurrence of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth hereinabove, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among itself and its buyers on such a basis as Seller determines to be equitable, in its sole discretion, without liability for any failure of performance which may result therefrom.

12. CANCELLATION: Except as otherwise provided herein, no order may be cancelled on special or made-to-order Goods unless requested in writing by either party and accepted in writing by the other party. In the event of a cancellation by Buyer, Buyer shall, within thirty (30) days of such cancellation, pay Seller a cancellation fee, which shall include all costs and expenses incurred by Seller prior to the receipt of the request for cancellation, including but not limited to, all commitments to its suppliers, subcontractors and others, all fully burdened labor and overhead expended by Seller, plus a reasonable profit charge. Return of Goods shall be in accordance with Seller's most current return policy and subject to a minimum thirty percent (30%) restocking fee, unless otherwise agreed to by the parties in writing. Notwithstanding anything to the contrary herein, in the event that: (i) there is a commencement by or against Buyer of any voluntary or involuntary proceedings in bankruptcy or insolvency; (ii) it is determined Buyer is insolvent; (iii) Buyer makes a general assignment for the benefit of its creditors; (iv) a receiver is appointed on account of Buyer's insolvency; (v) Buyer fails to make payment when due under the agreed terms as provided herein; or (vi) Buyer does not correct or, if immediate correction is not possible, commence and diligently continue action to correct any default of Buyer to comply with any of the provisions or requirements of the agreed terms as provided herein within ten (10) calendar

days after being notified in writing of such default by Seller, Seller may, by written notice to Buyer, without prejudice to any other rights or remedies which Seller may have, terminate its further performance hereunder. In the event of such termination, Seller shall be entitled to receive payment as if Buyer has cancelled its purchase order pursuant to this paragraph. Seller may nevertheless elect to complete its performance of under the agreed terms provided herein by any means it chooses. Buyer agrees to be responsible for any additional costs incurred by Seller in so doing. Upon termination of the agreed terms as provided herein, the rights, obligations and liabilities of the parties, which shall have arisen or been incurred hereunder prior to its termination, shall survive such termination.

13. CHANGES: Buyer may request changes or additions to the Goods consistent with the Seller's specifications and criteria. In the event Seller accepts such changes or additions, Seller may revise the price and dates of delivery. Seller reserves the right to change the design and specifications for the Goods without prior notice to the Buyer, except with respect to Goods being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods manufactured prior to the date of notification of such change.

14. NUCLEAR/FIRE/MEDICAL: GOODS SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, FIRE SYSTEMS, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods with the foregoing understanding, and agrees to communicate same in writing to any subsequent purchasers or users, and to defend, indemnify and hold harmless Seller for any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

15. ASSIGNMENT: Buyer shall not assign its rights or delegate its duties hereunder, or any interest herein, without the prior written consent of Seller, and any such assignment, without such consent, shall be null and void.

16. INSPECTION/TESTING: Buyer shall have the right to inspect the Goods upon their receipt. When delivery is to Buyer's site or to a project site ("Site"), Buyer shall notify Seller in writing of any nonconformity of the Goods with the quotation, estimate or bid, or the agreed terms as provided herein, within three (3) days from receipt of the Goods by Buyer, unless a shorter period is required in Seller's quotation, estimate or bid. For all other deliveries, Buyer shall notify Seller in writing of any nonconformity of the Goods with the quotation, estimate or bid, or the agreed terms as provided herein, within fourteen (14) days from receipt of the Goods by Buyer. Failure to give such applicable notice shall constitute a waiver of Buyer's right to inspect and/or reject the Goods for nonconformity, and shall be equivalent to an irrevocable acceptance of the Goods by Buyer. Claims for loss of or damage to Goods in transit must be made to the carrier, and not to Seller. Buyer, at its option and sole expense, may inspect and observe the testing by Seller of the Goods for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is determined by Seller. Any rejection of the Goods must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed, and the test fully met, when the Goods meet Seller's criteria for such procedures. Acceptance by Buyer, or Buyer's representative, of any witnessed testing or coatings will preclude any future rejection.

17. STANDARD TOLERANCE: Except for made-to-order Goods specified by the Buyer in writing and expressly agreed to in writing by Seller, all Goods furnished hereunder are produced in accordance with the standard manufacturing practices in the country of origin of the Goods. All materials incorporated into the Goods are subject to mill tolerances and variations consistent with normal manufacturing practices for dimension, weight, straightness, section, composition and mechanical properties, normal surface and internal conditions, and deviations in quality resulting from practical testing. Seller is not responsible for any deterioration in quality as a result of the foregoing tolerances and variations.

18. DRAWINGS: Any prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with Seller's quotation, estimate or bid are the property of Seller, and Seller retains all rights, including without limitation, exclusive rights of use and license. Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request by Seller. Seller does not supply detailed or shop working drawings of the Goods; however, Seller will supply necessary installation drawings. The drawings and bulletin illustrations submitted with Seller's quotation, estimate or bid, show general type, arrangement and approximate dimensions of the Goods to be furnished for Buyer's information only, and Seller makes no representation or warranty regarding their accuracy. Unless expressly stated to the contrary within the quotation, estimate or bid, all drawings, illustrations, specifications or diagrams form no part of the agreed terms as provided herein. Seller reserves the right to alter such details in design or arrangement of its Goods which, in its sole discretion, constitute an improvement in construction, application or operation of the Goods. All engineering information necessary for installation of the Goods shall be forwarded by Seller to Buyer at the time the Goods are shipped. After Buyer's acceptance of Seller's quotation, estimate or bid, any changes requested by Buyer in the type of Goods, the arrangement of the Goods, or the application of the Goods will be made at Buyer's expense. Instructions necessary for installation, operating and maintenance will be supplied when the Goods are shipped.

19. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established, or from which the Goods may be supplied, will apply to the Goods receipt and use. In no event shall Buyer use, transfer, release, import or export any Goods in violation of such applicable laws, regulations, orders or requirements. The Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Goods to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any Goods is prohibited by applicable law, regulation or rule. The Buyer shall be solely responsible for any breach of this Section 19.

20. Proprietary Information, Injunction: Any designs, illustrations, drawings, specifications, technical data, catalogues, "know-how", economic or other business, manufacturing or distribution information (collectively "Proprietary Information") disclosed to Buyer shall be deemed proprietary and confidential to Seller. Buyer agrees not to disclose, use or reproduce any Proprietary Information without first having obtained Seller's express written consent. Buyer's agreement to refrain from disclosing, using or reproducing Proprietary Information shall survive completion of the work and delivery of the Goods under the agreed terms as provided herein. Buyer acknowledges that its improper disclosure of Proprietary Information to any third party will result in Seller's suffering irreparable harm. Seller may seek injunctive or equitable relief to prevent Buyer's unauthorized disclosure of Proprietary Information.

21. Installation and Start-up: Unless otherwise agreed to in writing by Seller, installation of the Goods shall be the sole responsibility of Buyer. In the event Buyer has engaged Seller to provide an engineer for start-up supervision, such engineer will function in a supervisory capacity only, and Seller shall have no responsibility for the quality of workmanship of the installation. Buyer understands and agrees that it shall furnish, at Buyer's sole expense, all necessary foundations, supplies, labor and facilities that might be required to install and operate the Goods.

22. INSURANCE: Buyer agrees to do all acts necessary to protect Seller's interest by adequately insuring the Goods against loss or damage from any external cause, with Seller named as insured, additional insured or co-insured. Seller and Buyer agree to maintain liability insurance in commercially reasonable amounts covering claims of any kind or nature for damage to property or personal injury, including death, made by anyone that may arise from activities performed or facilitated related to the Goods, whether these activities are performed by that company, its employees, agents, or anyone directly engaged or employed by that party or its agents.

23. GENERAL PROVISIONS: These terms and conditions herein supersede all other communications, negotiations, and prior oral or written statements regarding the subject matter of the agreed terms as provided herein. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller, unless made in writing and signed on its behalf by a duly authorized officer of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to the agreed terms as provided herein by Seller's receipt, acknowledgement, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document

shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different term set forth herein. There is no waiver by either party with respect to any other breach or default of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, estimate or bid, acknowledgement or publication are subject to correction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two years after the cause of action has accrued.

24. GOVERNING LAW: THE AGREED TERMS AS PROVIDED HEREIN, AND THE VALIDITY, PERFORMANCE, AND ALL OTHER MATTERS RELATING TO THE INTERPRETATION AND EFFECT OF AND ALL RIGHTS AND OBLIGATIONS HEREUNDER, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW. SUBJECT TO THE ARBITRATION PROVISION AS PROVIDED HEREINABOVE, THE JURISDICTION OF ANY PROCEEDING RELATED TO THE GOODS SHALL BE IN THE STATE OF TEXAS AND VENUE SHALL BE LUBBOCK COUNTY, TEXAS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

25. Titles: The section titles herein are for reference only, and shall not limit or restrict the interpretation or construction of this Agreement.

26. Waiver: Seller's failure to insist, in any one or more instances, upon Buyer's performance of this Agreement, or to exercise any rights conferred, shall not constitute a waiver or relinquishment of any such right or right to insist upon Buyer's performance in any other regard.

27. Severability: The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.