

TERMS AND CONDITIONS OF SALE

ALL SALES OF PRODUCTS BY HARTSON-KENNEDY INC. (“HK”) SHALL BE GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS AND ANY OTHER DOCUMENTS REFERENCED HEREIN. HK REJECTS AND OBJECTS TO ANY TERMS OR CONDITIONS PUT FORWARD BY BUYER THAT ADD TO OR VARY THESE TERMS AND CONDITIONS.

1. FORMATION OF CONTRACT. HARTSON-KENNEDY INC. TERMS AND CONDITIONS OF SALE as stated herein (and available at www.hartson-kennedy.com), the Order Acknowledgement form, Order Verification form, Bill of Lading, or other written confirmation of order document from HK, (collectively the “Contract Documents”), shall govern all purchases of goods by BUYER. A purchase order is deemed by HK to be an offer or counteroffer to purchase and HK’S acceptance by delivering product is subject to and conditioned to these TERMS AND CONDITIONS OF SALE, and any different or additional terms purported to be made or conditioned by BUYER, whether through the use of BUYER’S purchase order form or otherwise shall have no force or effect unless approved in a separate writing signed by an authorized officer or proxy holder of HK. The parties expressly intend that this Section 1 govern the interpretation of their rights and responsibilities and that it shall supersede any different interpretation that would result from the application of UCC section 2-207 regarding conflicting documents or legal authority to similar effect.

2. AUTHORITY OF HK’S REPRESENTATIVES. Unless a representation, warranty or promise made by an agent, representative or employee of HK is specifically set forth in the Contract Documents, it is not the basis of the sale and shall not be enforceable against HK.

3. COST OF DELIVERY, TAXES AND OTHER CHARGES. HK will not cover any cost associated with delay(s) on order(s). Delivery dates are estimated dates and are not guaranteed. BUYER shall pay any extraordinary costs of shipment and delivery of the products and all sales, use, excise or similar taxes, or other charges, which HK is required to pay, or to collect and remit, to any Government (national, state, or local) and which are imposed on, or measured by, the sale. Payment of such items shall be due on receipt of invoice.

4. RISK OF LOSS AND TITLE. Risk of loss or damage to and responsibility for products shall pass to BUYER upon delivery to the agreed destination point. HK shall select means of transportation and routing. HK retains title to all products sold to BUYER until HK receives payment in full of all amounts due in connection with the sale thereof. BUYER grants HK a purchase money security interest in all products sold hereunder to secure payment of the purchase price.

5. DUTY TO INSPECT. Upon delivery of the product(s), BUYER shall inspect the products for nonconformity to determine the presence of any patent defects (meaning any defects that are apparent, or should have been apparent, by a visual inspection and including but not limited to wrong product, color, etc.). Buyer must note any alleged defects on the delivery receipt at the time of delivery and notify HK Customer Service immediately. For anything other than a patent defect, Buyer must notify HK in writing of any alleged defect within five (5) days of the date that the Buyer discovered or should have reasonably discovered such defect. Failure by BUYER to timely notify HK of a claim, shall constitute a waiver by BUYER of all claims in respect of such products. Any action for breach of this contract (other than for nonpayment of the purchase price) must be commenced within one year after the occurrence of the breach.

6. PRODUCT WARRANTY. HK may provide product specific written warranties, as set out in HK’S sales materials, website and/or as annexed hereto or referenced herein. In the absence of any such specific warranty, for products sold hereunder, as published at www.hartson-kennedy.com, HK warrants to BUYERS of HK’S products that the products sold shall be reasonably free from defects in materials and workmanship for a period of one (1) year from the date of purchase. This limited warranty applies only to properly installed products under normal use and wear. **HK’S SOLE OBLIGATION TO BUYER FOR A WARRANTY REMEDY, AT THE SOLE OPTION OF HK, SHALL BE REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS. THIS LIMITED WARRANTY SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF THE BUYER. NO OTHER WARRANTY, EXPRESS OR IMPLIED, ORAL, OR WRITTEN IS EITHER MADE OR SHALL BE DEEMED MADE BY HK WITH RESPECT TO THE PRODUCTS.**

7. DISCLAIMER OF WARRANTIES. HK EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR TRADE OR USAGE.

8. LIMITATION OF LIABILITY. IN NO EVENT SHALL HK HAVE ANY OBLIGATION OR LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY (INCLUDING YOUR CUSTOMERS OR CONTRACTORS), FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING WITHOUT LIMITATION DAMAGES TO, OR LOSS OF USE OF PROPERTY, DAMAGES FOR LOSS OF PROFITS OR REVENUES, DELAY, PUNITIVE, OR ANY OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY, USE, REPAIR OR PERFORMANCE OF ANY OF HK’S PRODUCTS SUBJECT TO THE

ORDER. HK’S LIABILITY, INCLUDING CLAIMS FOR INDEMNIFICATION, WILL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

9. APPLICABLE CODES; INDEMNIFICATION. BUYER ASSUMES ALL RISK AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS HK FOR ALL CLAIMS, COSTS AND DAMAGES ARISING OUT OF OR RELATING TO ANY FAILURE BY BUYER TO COMPLY WITH ANY APPLICABLE CODES OR INDUSTRY STANDARDS AND ANY FAILURE OF PRODUCTS MANUFACTURED TO ORDER ACCORDING TO BUYER’S SPECIFICATIONS OR DESIGN.

10. FORCE MAJEURE. Neither party to this order shall be liable to the other party for any failure to perform any obligations hereunder to the extent that such failure is the direct or indirect result of conditions beyond either party’s control, including, but not limited to, an act of God, a governmental act, order or regulation, a domestic or international occurrence such as a riot, war, act of terrorism or insurrection, strike, fire, flood, pandemic, earthquake, explosion, lockout or embargo, or any criminal activities of third parties. Quantities so affected may be eliminated from the amount ordered at the discretion of the party affected without liability and HK may allocate its available supply among its purchasers, including its own internal customer divisions, in an equitable manner as determined by HK in its sole discretion, but the order shall remain otherwise unaffected. Notwithstanding the foregoing, this section shall not excuse any late payment by BUYER pursuant to this order.

11. RIGHTS OF HK. If, in HK’S judgment, BUYER’S credit shall become impaired at any time, HK may decline to make shipments hereunder except upon receipt of cash payments in advance or security or other proof of responsibility satisfactory to HK. If BUYER fails in any way to fulfill the terms and conditions hereof, HK may defer further shipments until such default is corrected. Remedies provided herein shall be in addition to, and not in lieu of, other remedies that may be available to HK.

12. APPLICABLE LAW/VENUE. This contract shall be construed, and the respective rights and duties of BUYER and HK are to be determined, exclusively according to the laws of the State of Indiana, without regard to principles of choice of law. The courts of Marion County, Indiana, USA have exclusive jurisdiction to hear disputes arising out of this contract.

13. NON-ASSIGNABILITY. This contract is not assignable or transferable by either party, except to its successor or to the transferee of all or substantially all the party’s assets to which this contract relates.

14. INTELLECTUAL PROPERTY. With respect to products, materials and services delivered, HK retains all right, title, and interest in all of the intellectual property rights.

15. GOVERNMENTAL LAW AND REGULATIONS. HK and BUYER each agree, to the extent applicable to their respective obligations hereunder, to comply with laws, rules, regulations, executive orders, priorities, ordinances and restrictions now or hereafter in force, including but not limited to (a) the Fair Labor Standards Act of 1938, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; The Age Discrimination in Employment Act of 1967, as amended; and (d) the rules, regulations and executive orders pertaining thereto.

16. CANCELLATION. If BUYER has and exercises a right to terminate any order, BUYER shall pay the costs incurred by HK up to the date of termination, including, but not limited to, the costs to manufacture the subject products or the costs to return or cancel any products ordered from a third party.

17. MISCELLANEOUS. (a) No waiver by HK of any of term, condition or breach by BUYER shall constitute or be deemed to be a waiver of any other term, condition or breach of any other instance of noncompliance with the same term or condition or any other such breach, whether prior or subsequent thereto. No waiver shall be deemed to occur as a result of the failure of any party to enforce any contractual term or condition. (b) Each provision hereof shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be unenforceable, such provision shall be ineffective only to such extent, without otherwise invalidating such provision or any other provisions hereof. The paragraph headings are for convenience only. (c) BUYER shall have no right of setoff, and no deduction of amounts due from BUYER to HK shall be made without HK’S express written approval.