

## MUHLEN SOHN PRODUCTS AND SERVICES TERMS AND CONDITIONS

1. **Application.** These terms ("Terms") govern all equipment sales ("Equipment") and services ("Services") provided by Muhlen Sohn Inc., its parent and affiliates (together, "Seller") and, to the extent that any terms contained herein are inconsistent with the terms stated on a purchase order or service order (each, a "PO"), these Terms shall supersede the terms of the PO. These Terms and the PO, as supplemented and superseded by these Terms, are collectively referred to as the "Agreement." The Company hereby gives notice of its objections to any terms or conditions in the PO which are inconsistent with these Terms, and further rejects any additional or inconsistent terms provided by Buyer in relation to this Agreement or the purchase of any Equipment or Services hereunder. These Terms set forth the only terms and conditions under which Buyer will purchase Equipment or Services from Seller notwithstanding any conflicting term or condition contained in the PO, request for proposals, purchase agreements or any other form submitted by Buyer (collectively "Order"). Any changes to these Terms or conditions by the Buyer are not valid unless mutually agreed in writing by the parties.

2. **Quotation and Order.** Seller's quotation for Equipment and Services are non-binding and subject to change in Seller's sole discretion. Upon issuance of a PO, these Terms shall become binding with respect to the Equipment and/or Services set forth in such PO.

3. **Inspection.** Equipment is subject to Buyer's reasonable inspection at Buyer's facility. Buyer shall inspect Equipment at the time of delivery and accept or reject Equipment within ten (10) days after the date of delivery. Services shall be inspected upon completion. In the event the Buyer, after such inspection, rejects the Equipment due to an alleged defect, Buyer shall have the right, at Seller's option, to return materially defective Equipment for credit or replacement. Any claim(s) arising from any alleged defect in the quality of the Equipment are waived and released by Buyer unless notice of such claims is made in writing to Seller within ten (10) business days from the date of delivery. All claims must set forth in detail the alleged basis for rejection, and are subject to Seller's confirmation of any such alleged defect. In the absence of such written notice, or if Seller determines that the Equipment is not defective Buyer shall be deemed to have accepted the Equipment and no claim for rejection shall be effective. Seller shall not accept any return of Equipment except in the case of a manufacturing or processing error by Seller relating thereto ("Seller Error").

4. **Testing.** Equipment is subject to Buyer's reasonable inspection following completion of Services. Buyer shall inspect the Equipment at the time of onsite repair and shall promptly advise Seller if the Equipment is not functioning properly.

5. **Equipment Return; Cancellation.** Seller will not accept return of any special order Equipment. Prior authorization for all returned items is required. Equipment is eligible for return for only six (6) months after delivery of such Equipment to Buyer. Buyer shall bear the risk of loss during any return shipment, and Buyer must secure sufficient insurance to cover the risk of loss or damage to the Equipment during return shipment. A request for return of Equipment must specify reason for return, order number and invoice number with date of invoice. All returned Equipment must be received in its original packages, undamaged, packed appropriately for shipping and shall not have been used. Items must be in saleable condition and suitable for restocking. Returned Equipment is subject to a twenty percent (20%) restocking charge. If Equipment is returned and such Equipment has been used or installed, Buyer will remain liable for the entire invoiced purchase price of the Equipment.

6. **Limited Warranty. Equipment:** Seller warrants and represents to Buyer that all Equipment is free and clear of liens and encumbrances and Buyer will have clear and marketable title to the Equipment, subject to Section 13. Seller warrants and represents that all Equipment will conform to the applicable specifications and be free from material defects in materials and workmanship. **UNLESS A SPECIFIC PRODUCT WARRANTY IS PROVIDED WITH THE EQUIPMENT, THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF AND SHALL SUPERSEDE ALL OTHER WARRANTIES OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED. SELLER EXPRESSLY REJECTS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF NON-INFRINGEMENT.** The foregoing warranties do not apply where Equipment: (i) Equipment has been subject to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any specifications or instructions issued by Seller, or (ii) have been reconstructed, repaired, altered or modified by persons other than Seller. Seller's warranty period is for six (6) months from the date of Equipment delivery to Buyer's facility. **Services:** Seller disclaims any and all warranties, express or implied, for Services provided by Seller.

7. **Limitations of Remedies and Damages.** Buyer's sole and exclusive remedy for any claim arising by reason of or in connection with the sale, purchase, delivery or use of the Equipment or rendering of Services, regardless of whether such claim is based on tort law, breach of contract, breach of warranty or any other legal theory (each, a "Claim") shall be, at Seller's option, the repair or replacement of any defective Equipment or non-conforming parts thereof, or, as applicable, re-performance of Services. Buyer's exclusive remedy for any breach of the Agreement or the limited warranty set forth in Section 5 of these Terms (a "Breach") is repair or replacement, at Seller's option, of any defective Equipment. Under no circumstances shall Seller be liable for loss of use, lost profits or any other collateral, special, consequential or other damages, losses or expenses in connection with or by reason of any Claim or Breach, whether such Claim or Breach is founded in tort or contract. The foregoing constitutes the sole and exclusive remedy of Buyer and the exclusive liability of Seller. Any lawsuit asserting any Claim or Breach by Buyer against Seller must be brought within ten (10) days after delivery of the nonconforming Equipment or performance of Services for Buyer or such Claim or Breach shall be forever barred. Product defects must be communicated in writing immediately.

8. **Insurance.** Buyer shall maintain adequate product liability, general public liability and property damage insurance against any claim or claims relating to the

Equipment that may be asserted by or on behalf of, or as a result of any claim arising from or relating to the Equipment or Services.

9. **Indemnification.** Buyer agrees to indemnify and hold harmless Seller, its directors, officers, employees, agents and insurers from any and all Actions arising out of, or resulting from, or otherwise related to bodily injury, property damage or any other damage or injury caused in whole or in any part by: (i) any fault, negligence, intentional misconduct of Buyer, including, but not limited to, the failure of Buyer to perform its obligations hereunder; or (ii) actions by Buyer in violation of any applicable law or regulation ("Indemnification Event"). In the case of an Indemnification Event: (A) Buyer shall notify Seller in writing of such Indemnification Event and promptly send Seller a copy of any and all documentation of an Action arising from or relating to the Indemnification Event; (B) Buyer shall permit Seller to retain counsel of its choosing at Buyer's expense; (C) Buyer shall allow Seller to retain exclusive control of such Action, and allow Seller to have full and complete authority to decide issues material to the Action, including without limitation the right to make any settlement, to determine whether to proceed to trial and to determine whether to take an appeal after trial; (D) Buyer shall cooperate fully with Seller in defending such Action, including without limitation attending and giving depositions, participating in any and all trials, hearings or similar proceedings and otherwise devoting the time and attention necessary to such defense, all without cost or expense to Seller; (E) Buyer shall make no compromise or settlement of any claim without the prior written consent of Seller; and (F) Buyer shall, upon submission of invoices, reimburse or pay directly, Seller's reasonable attorney's fees and costs. In addition, upon notice from Seller, Buyer shall promptly pay all amounts that Seller has become legally obligated to pay by judgment, settlement or otherwise, by reason of any Buyer Indemnification Event.

10. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR OTHERWISE, SELLER'S TOTAL AGGREGATE LIABILITY FOR ANY ACTS, OMISSIONS OR BREACHES HEREUNDER ARE LIMITED TO THE LESSER OF (i) THE AMOUNT PAID BY BUYER TO SUPPLIER UNDER THIS AGREEMENT DURING THE PRIOR TWELVE (12) CALENDAR MONTH PERIOD, OR (ii) \$250,000.00 USD.

11. **Intellectual Property.** Seller retains all right, title and interest to the design, drawings, specifications, and intellectual property associated with the Equipment.

12. **Price.** Prices for Equipment and Services are firm for a period of thirty (30) days. Buyer shall be responsible for all charges for taxes. Sales and use taxes, not subject to exemption, shall be stated separately in Seller's invoice. It is Buyer's responsibility to provide proof of tax-exempt status.

13. **Payment Terms.** Full payment without setoff shall be due to Seller from Buyer within thirty (30) days following delivery of Equipment or rendering of Services to Buyer unless otherwise agreed by the parties in writing. Buyer shall pay Seller for all Equipment delivered and Services rendered regardless of whether a dispute exists as to any other Equipment, product or Service. Buyer shall have no right to offset or withhold payment. Seller will not provide notice of past due balances, which shall immediately be subject to a service charge of one and one-half percent (1.5%) per month, not to exceed the maximum amount permitted by applicable law. Seller may cancel or delay delivery of Equipment or rendering of Services in the event of an arrearage on Buyer's account. Seller may waive any default without waiving any prior or subsequent default. Buyer agrees to pay all costs, including reasonable attorney's fees, incurred in any collection efforts for outstanding balances. Seller shall retain a purchase money security interest in all Equipment, and the proceeds thereof, until Buyer has made payment in full in accordance with the terms hereof. Buyer shall cooperate fully with Seller to execute such documents and accomplish such filings and/or recordings as Seller may deem necessary for the protection of its interests in the Equipment furnished to Buyer.

14. **Transportation and Risk of Loss.** All Equipment shall be packed for shipment in Seller's standard packaging for the specific Equipment purchased, to the address specified in Buyer's order. All Equipment shall be shipped Ex Works (Incoterms 2010) Seller's facility, and title and risk of damage to or loss of the Equipment shall pass to Buyer upon placement of the Equipment upon the shipping dock at Seller's facility for pickup by a carrier. Seller may accommodate expedited shipping or shipment of Equipment with a specific carrier if Buyer so requests, for which Seller may assess additional charges. Seller shall acknowledge each Order and confirm delivery dates. Seller shall not be responsible for any delays arising, directly or indirectly, from strikes, labor difficulties, riots, civil unrest, war, fire, collapse, floods, delay or defaults of common carriers, failure or cartel/went of Seller's usual source of supply, governmental decrees and orders, or without limiting the foregoing, any other delay beyond Seller's control; **provided, however,** that Seller shall use reasonable efforts to notify Buyer of anticipated delays and to deliver the Equipment ordered as soon as reasonably possible.

15. **Cancellation of Services.** Buyer may cancel Services up to forty-eight (48) hours prior to the date of such scheduled Service. If Buyer does not reschedule such Services within ten (10) days, Buyer will be charged a restocking fee of minimum \$250 for any and all replacement parts reserved for Buyer's Equipment or all actually incurred costs.

16. **Governing Law and Venue.** This agreement and these Terms are being delivered and executed in the State of Indiana. Any action brought regarding the validity, construction, termination or enforcement of this Agreement or these Terms shall be governed in all respects by the laws of the State of Indiana, without regard to the principles of conflicts of laws and shall in no way be subject to the United Nations Convention on Contracts for the International Sale of Goods. Venue shall be proper only in Madison County, Indiana. The parties agree that they are subject to personal jurisdiction in such court and consent to service of process issued by such court.