

JARP INDUSTRIES, INC.—TERMS AND CONDITIONS OF SALE

QUOTATIONS ARE MADE AND ORDERS ARE ACCEPTED BY JARP INDUSTRIES, INC. (“JARP”) SUBJECT ONLY TO THESE TERMS AND CONDITIONS.

- 1. MODIFICATIONS OF SALES TERMS.** Any Terms and Conditions contained in any purchase order or other form of communication from a Jarp customer (“Buyer”) that are additional to or different from these Terms and Conditions shall be deemed rejected by Jarp unless expressly accepted in writing by Jarp. In general, no modification, amendment, waiver, or other change of any of these Terms and Conditions of Sale and those contained on the reverse side and/or in attachments (“Terms and Conditions”), or of any of Jarp’s rights or remedies under the Terms and Conditions, shall be binding on Jarp unless expressly accepted in writing by Jarp’s authorized officers. No course of dealing, usage of trade, or course of performance shall be relevant to explain or supplement any of these Terms and Conditions. In case of conflict between the Terms and Conditions printed on this page and those contained on the face side or in attachments, the latter shall control. If any document issued by any party is sent by facsimile or another form of electronic document transmission, the parties agree that (a) the copy of any such document printed on the facsimile machine or printer of the recipient is a counterpart original copy and is a “writing,” (b) delivery of any such document to the recipient by facsimile or such other form of electronic document transmission is authorized by the recipient and is legally sufficient for all purposes as if delivered by United States mail, (c) the typewritten name of an authorized agent of the party sending such document is sufficient as a signature on behalf of such party and the intent of such signature is to authenticate the writing, and (d) an electronically stored and reproduced copy of any such document shall be deemed to be legally sufficient evidence of the terms of such document for all purposes.
- 2. ACCEPTANCE OF ORDERS; QUOTATIONS.** Acceptance by Jarp of Buyer’s purchase order(s) is expressly conditioned upon Buyer’s assent to these Terms and Conditions. Notwithstanding anything in these Terms and Conditions to the contrary, Buyer will be deemed to have assented to such Terms and Conditions unless Jarp receives written notice of any objections within 15 days after Buyer’s receipt of this form and in all events prior to any delivery or other performance by Jarp of Buyer’s order. Quotations by Jarp shall be deemed to be offers by Jarp to sell the products described (“Products”) subject to these Terms and Conditions, and acceptance of such offers is expressly limited to acceptance by Buyer of all of these Terms and Conditions within 15 days from the date of the quotation. Buyer’s acceptance of any Products shipped by Jarp shall constitute acceptance of these Terms and Conditions. Purchase orders submitted by Buyer for the Products quoted by Jarp shall be subject to and will be deemed to constitute acceptance of these Terms and Conditions. All purchase orders will be subject to approval by Jarp.
- 3. PRICES; PRICE CHANGES.** All prices are net F.O.B. shipping point and are subject to change without notice. In the event of a change in Jarp’s prices, the price for Products unshipped will be the price in effect on the date of shipment. If Jarp’s quoted price was based upon delivery to and acceptance by Buyer of a specified quantity of Products, such price shall be subject to adjustment if Buyer does not accept the quantity at the times specified in Jarp’s quotation, and Buyer will be invoiced at Jarp’s standard price without quantity discounts, if any, for the quantity of Products actually accepted by Buyer.
- 4. TAXES.** In addition to any prices, Buyer shall pay the amount of any present or future manufacturer’s tax, retailer’s occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Jarp and Buyer. In the event Jarp is required to pay any such tax, fee, or charge, Buyer shall reimburse Jarp for that tax; or, in lieu of such payment, Buyer shall provide Jarp at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing such tax, fee, or charge.
- 5. TERMS OF PAYMENT.** All orders are subject to the approval of Jarp. Terms of payment are cash in full no later than 30 days from date of shipment, without discount. If, during the period of performance of an order, the financial condition of Buyer is determined by Jarp not to justify the terms of payment specified, Jarp may demand full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option without prejudice to other lawful remedies, may defer delivery or cancel the order. If delivery is deferred, the Products may be stored as provided in Section 8 and Jarp may submit a new estimate of cost for completion based on prevailing conditions. If Buyer defaults on any payment when due, or in the event any voluntary or involuntary bankruptcy or insolvency proceedings involving Buyer are initiated by or against Buyer, then the entire payment shall immediately become due and payable upon demand. In addition, Jarp, at its option and without prejudice to its other lawful remedies, may defer delivery or cancel this order. Pro rata payments shall become due in accordance with these Terms and Conditions as shipments are made. If shipments are delayed by the Buyer for any cause, payments shall become due according to these Terms and Conditions from the date on which Jarp is prepared to make shipment. Storage for any delayed shipment shall be the Buyer’s risk and expense as provided in Section 8. If manufacture is delayed by the Buyer for any cause, a partial payment based upon the proportion of the order completed shall become due from the date on which Jarp is notified of the delay.
- 6. DELIVERY; RISK OF LOSS.** All sales are F.O.B. Jarp’s plant or other point of shipment designated by Jarp. Shipping dates are estimates only which are not guaranteed and are based upon prompt receipt from Buyer of all necessary shipping and other information. Jarp reserves the right to make delivery in installments. All installments will be separately invoiced and paid for by Buyer when due per date of delivery of invoice, without regard to subsequent deliveries. Delivery of Products to a commercial carrier at Jarp’s plant or other loading point shall constitute delivery to Buyer, and any risk of loss and further cost and responsibility for claims, delivery, loss or damage, including, if applicable, placement and storage, shall be borne by Buyer. When Products are delivered by Jarp’s truck, unloading at Buyer’s dock shall constitute delivery to Buyer. Claims for shortages or other errors in delivery must be made in writing to Jarp within 10 days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss or damage to Products in transit by common carrier must be made to the carrier and not to Jarp. Freight and handling charges by Jarp may not reflect actual freight charges prepaid to the carrier by Jarp due to incentive discounts earned by Jarp based upon Jarp’s aggregate volume of freight tendered to a carrier or when a carrier must be used which charges a rate which is different than the rate upon which Jarp’s freight and handling charges were based. When shipments are delivered in Jarp’s private trucks, Buyer will be charged an amount approximating the prevailing common carrier rate.
- 7. EXCUSABLE DELAYS; FORCE MAJEURE.** Jarp shall not be liable for any ordinary, incidental, or consequential loss or damage as a result of Jarp’s delay in or failure of delivery or installation due to (a) any cause beyond Jarp’s reasonable control, (b) an act of God, act of the Buyer, embargo, or other governmental act, authority, regulation, or request, fire, theft, accident, strike, slowdown or other labor disturbance, war, riot, delay in transportation, or (c) inability to obtain necessary labor, materials, components, or facilities. Should any of the events in this section occur, Jarp, at its option, may cancel Buyer’s order with respect to any undelivered Products or extend the delivery date for a period equal to the time lost because of delay. In the event Jarp elects to so cancel the order, Jarp shall be released of and from all liability for failure to deliver the Products, including, but not limited to, any and all claims on behalf of Buyer for lost profits, or any other claim of any nature which Buyer might have. If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer shall pay Jarp for all resulting additional charges.
- 8. STORAGE.** If the Products are not shipped within 30 days after notification has been made to Buyer that it is ready for shipping, for any reason beyond Jarp’s control, including Buyer’s failure to give shipping instructions, Jarp may store the Products at Buyer’s risk and expense in a warehouse or upon Jarp’s premises, and Buyer shall pay all handling, transportation, and storage costs at the prevailing commercial rates promptly following Jarp’s submission of invoices for such costs.
- 9. WARRANTIES.** Jarp warrants the Products manufactured by or for it to be free from defects in materials and workmanship and to conform to Jarp’s written specifications for a period of 12 months from date of shipment. If, prior to expiration of the applicable warranty period, any Products shall be proved to Jarp’s satisfaction to be defective or nonconforming, Jarp will repair or replace such defective Products or components, F.O.B. Jarp’s plant or other destination designated by Jarp, or will refund or provide Buyer with a credit in the amount of the purchase price paid by Buyer, at Jarp’s sole option. Buyer’s exclusive remedy and Jarp’s sole obligation under this warranty shall be limited to such repair or replacement, F.O.B. Jarp’s plant or other destination designated by Jarp, or refund or credit by Jarp, and shall be conditioned upon Jarp’s receiving written notice of any defect within a reasonable period of time (but in no event more than sixty (60) days) after it was discovered or by reasonable care should have been discovered. In no event shall Jarp’s liability for such defective or nonconforming Products exceed the purchase price paid by Buyer. The warranties contained in this Section do

not (a) cover shipping expenses to and from Jarp's factory or other destination designated by Jarp for repair or replacement of defective Products or any tax, duty, custom, inspection, or testing fee, or any other charge of any nature related, nor does it cover the costs of disassembling or removing defective Products or reassembling, reinstalling, or testing repaired or replaced Products or finishing the reinstallation, (b) apply and shall be void with respect to Products operated in excess of rated capacity or otherwise not in accordance with installation, maintenance, or operating instructions or requirements, to Products repaired or altered by others than Jarp or Jarp's authorized service agencies, or to Products which were subjected to negligence, misuse, misapplication, accident, damages by circumstances beyond Jarp's control, to improper installation (if by others than Jarp), operation, maintenance, or storage, or to other than normal use or service, (c) apply to Products or components not manufactured by or for Jarp, and (d) apply to any damage occurring outside of Jarp property. With respect to Products or components not manufactured by Jarp, Jarp's warranty obligations shall in all respects conform and be limited to the warranty actually extended to Jarp by its suppliers, but in no event shall Jarp's obligations be greater than those provided under Jarp's warranty set forth in this section. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (EXCEPT TITLE), INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO EMPLOYEE, REPRESENTATIVE, OR AGENT OF JARP OTHER THAN AN OFFICER OF JARP IS AUTHORIZED TO ALTER OR MODIFY ANY PROVISION OF THIS SECTION OR TO MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EXPRESS OR IMPLIED, ORALLY OR IN WRITING, WHICH IS CONTRARY TO THIS SECTION.** Any description of the Products, whether in writing or made orally by Jarp or Jarp's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, or similar materials used in connection with Buyer's order are for the sole purpose of identifying the Products and shall not be construed as an express warranty. Any suggestions by Jarp or Jarp's agents regarding use, application, or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by Jarp's authorized officer.

10. LIMITATIONS OF LIABILITY; CONSEQUENTIAL DAMAGES. Jarp's liability with respect to Products proved to its satisfaction to be defective within the warranty period shall be limited to repair, replacement, or refund as provided in Section 9, and in no event shall Jarp's liability exceed the purchase price of the Products involved. Jarp shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence), or other theories of law, with respect to Products sold or services rendered by Jarp, or any related undertakings, acts, or omissions. Without limiting the generality of the foregoing, Jarp specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of Products or any associated Products, cost of capital, cost of substitute products, facilities or services, downtime, shutdown, or slowdown costs, or for any other types of economic loss, and for claims of Buyer's customers for any such damages. **JARP SHALL NOT BE LIABLE FOR AND HEREBY DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL, SPECIAL, AND CONTINGENT DAMAGES.**

11. INDEMNIFICATION BY BUYER. Buyer shall indemnify, hold harmless, and defend Jarp and Jarp's employees and agents from and against any and all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees, court costs, and out of pocket expenses) arising out of or resulting in any way from claims by customers of Buyer or third parties against Jarp alleging a breach of contract or warranty by Jarp to the extent that such damages, liability, claims, losses, and expenses are greater than those damages, liability, claims, losses, and expenses which may be payable by Jarp to Buyer pursuant to and as limited by Jarp's warranty and damage obligations as contained in Sections 9 and 10 so as to effectively limit Jarp's obligations to customers of Buyer or third parties to those set forth in Sections 9 and 10.

12. SECURITY AGREEMENT AND FINANCING STATEMENTS. To secure payment of the purchase price and of all monies which may be due under these Terms and Conditions, and performance of all of Buyer's obligations, Buyer hereby grants to Jarp a security interest in all Products sold by Jarp, and agrees to execute such other Security Agreements and Financing Statements as Jarp may reasonably request.

13. INSURANCE. Until payment in full of the purchase price, Buyer shall maintain insurance covering all Products sold by Jarp to Buyer in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, and shall, upon Jarp's request, furnish evidence of such insurance satisfactory to Jarp.

14. DRAWINGS; OTHER DESIGN DATA; TECHNICAL ADVICE. All specifications, drawings, design, data, information, ideas, methods, tools, gauges, dies, fixtures, patterns, and/or inventions made, conceived, developed, or acquired by Jarp in connection with procuring and/or executing Buyer's order will vest in and inure to Jarp's sole benefit notwithstanding any charges which may have been or may be imposed by Jarp. Buyer shall not give, loan, exhibit, sell, or transfer to any person not then employed by Buyer and authorized to receive such information, or to any organization or entity, any drawing, photograph, specification, or reproduction of such drawing, photograph, or specification furnished by Jarp which may enable such person, organization, or entity to furnish similar goods or parts. Jarp shall not be liable for any ordinary, proximate, incidental, or consequential damages arising directly or indirectly from any technical advice or drawings furnished to Buyer or any recommendations made by Jarp concerning the installation, maintenance, repair, replacement, adjustment, use, suitability, or application of any Products provided to Buyer, regardless of whether such technical advice is given, drawings are provided, or recommendations are made prior to or after substantial completion, final inspection, or initial use of the Products. The limitation of liability contained in this Section 14 shall survive the completion of any work to be performed by Jarp and shall apply to all technical advice given, drawings provided, and recommendations made by Jarp.

15. RETURN OF PRODUCTS. No Products shall be returned to Jarp without written authorization and shipping instructions first having been obtained from Jarp.

16. ASSIGNMENT AND SUBCONTRACTING. None of the Buyer's rights under any order shall be assigned by the Buyer to any other person, whether by operation of law or otherwise, without Jarp's prior written approval. Jarp may, without the necessity of obtaining Buyer's prior written consent, subcontract the production of all or any portion of the Products.

17. CANCELLATION. No order submitted to Jarp may be cancelled by Buyer without the prior written consent of Jarp, which consent will at all times be conditioned on Buyer's agreement to pay Jarp's cancellation charge. For finished Products which in Jarp's judgment are readily resalable to others, the cancellation charge shall be 15% of the invoice price of the Products. For all other cancellations, the cancellation charge shall amount to all costs and expenses incurred by Jarp and arising out of or in connection with Buyer's order, net of recoverability, but in no event less than ten percent (10%) of the invoice price of the Products or more than the invoice price.

18. GENERAL. These Terms and Conditions, and the contract of sale between Jarp and Buyer, shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Jarp and Buyer agree that any legal action deemed necessary by either party shall be brought in the Circuit Court in and for Marathon County, Wisconsin and both parties consent to the personal jurisdiction of such court in any such action over the parties. The rights and obligations of Jarp and Buyer shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. The invalidity, in whole or in part, of any of the provisions of these Terms and Conditions, shall not affect the enforceability of any of the other provisions.