

BREMSKERL CV, LLC

TERMS AND CONDITIONS OF SALE

1. **Acceptance of Contract.** These Terms and Conditions of Sale are for all goods (“the Goods”) furnished by Seller to Purchaser. Any Seller quotation, bid or acknowledgement, whether written or oral, is an offer subject to and expressly conditioned on Purchaser’s assent to these Terms and Conditions of Sale and any terms included in Seller’s quotation, bid or acknowledgement (collectively, these “Terms”). Acceptance of or payment for Goods shall constitute such assent. Seller expressly rejects any terms of any purchase order or other proposal of Purchaser, whether oral or written, which differ or are in addition to those contained in these Terms and such different or additional terms are null and void. These Terms represent the entire agreement between Seller and Purchaser, and expressly supersede all prior and contemporaneous agreements, arrangements, representations and communications, whether oral or written, regarding their subject matter. Except as provided herein, these Terms cannot be changed or modified by Purchaser in any manner, except by a written instrument, executed by a duly authorized agent of Seller. If any specified term or condition of these Terms is, or at any time becomes, unenforceable or invalid, no other term or condition will be affected thereby and the remaining terms and conditions will continue with the same force and effect as if such unenforceable or invalid term or condition had not been incorporated herein.

2. **Delivery.** Purchaser will be responsible for all shipping and freight charges. Unless otherwise expressly agreed in writing: (a) shipments will be by a carrier selected by Purchaser; (b) such carrier will act as the agent of Purchaser and delivery to such carrier will constitute delivery to Purchaser; (c) all sales and shipments of the Goods will be FOB shipping point, at which point title to and all risk of loss of the Goods will pass from Seller to Purchaser, provided that Seller will retain a purchase money security interest in the Goods until the full purchase price is paid by Purchaser; (d) Seller will make commercially reasonable

efforts to meet delivery and shipping dates specified by Purchaser, but such specified dates are estimates only and Seller will not incur any liability to Purchaser for delays in manufacturing, shipping or delivery; and (e) Seller will package the Goods as it deems proper for protection against normal handling and extra charges will apply to special packaging or shipping requests. Seller will notify Purchaser when the Goods are ready for delivery to Purchaser’s carrier. In the event Seller must expedite the manufacture of the Goods in order to comply with a change to Purchaser’s requested delivery date, Purchaser shall pay all resulting costs incurred by Seller.

3. **Prices, Payment Terms and Taxes.**

a. All prices stated in Seller’s most recently dated catalogue and price sheets then in effect: (i) are in United States dollars; (ii) are for the Goods and indicated materials only, and do not include shipping, freight, insurance, delivery, fees, permits, taxes or other costs and expenses; (iii) are current; and (iv) are subject to change upon notice to Purchaser.

b. All taxes, duties and other governmental charges (other than income taxes), including any interest or penalties thereon, required to be collected directly or indirectly by Seller in respect of the manufacture, production, sale, delivery, importation or use of the Goods sold pursuant to these Terms will be charged to and remitted by Purchaser to Seller promptly after Seller’s request therefor. Seller agrees that Purchaser shall not be liable for any taxes, duties or other governmental charges with respect to which an exemption exists or as to which Purchaser has furnished Seller with a valid exemption certificate.

c. Any and all payments for Goods will be made in United States dollars and payment is due Net 30 days from the date of invoice, unless expressly agreed in writing otherwise. All invoices must be paid without offset, defense or counterclaim, regardless of controversies relating to any delivered or undelivered Goods. Any invoices not paid by Purchaser when due shall be assessed a late

payment charge of 2% per month of the overdue payment from its due date until paid. Purchaser shall be liable for Seller's reasonable attorneys' fees and other costs incurred in the collection of amounts owed by Purchaser whether or not litigation is filed.

4. **Cancellation.** Except as otherwise agreed to in writing by Seller, no orders for Goods may be cancelled or rescheduled without Seller's express written consent, which consent may be given or withheld by Seller in its sole discretion.

5. **Quality and Specifications.** Purchaser and Seller acknowledge that the Goods will be manufactured pursuant to the specifications set forth in Seller's most recently dated catalogue (the "**Specifications**"), unless Specifications are modified by an agreement in writing executed by duly authorized agents of Purchaser and Seller. In the event such changes or modifications to the Specifications will increase or decrease the cost to manufacture or deliver the Goods, Seller and Purchaser will negotiate an equitable adjustment to the price to accommodate such changes.

6. **Warranties.**

a. Seller warrants to Purchaser that the Goods and any replacement Goods provided in connection with a claim pursuant to this **Section 6** will: (i) conform to the Specifications; (ii) be free from defects in material and workmanship, when properly maintained, and under normal use and service; and (iii) be adequately contained, packaged, marked and labeled.

b. Seller's obligation to Purchaser under this warranty shall be limited to the repair or replacement, at Seller's option, of any defective Goods, which are the result of defective material and/or defective workmanship by Seller. Purchaser must give notice of such defect immediately after such defect is or ought to have been discovered and such defective Goods must be returned to Seller (or Seller's agent, as designated by Seller) within ten (10) days after Seller requests their return for inspection and/or repair or replacement.

c. This warranty will expire twelve (12) months from the date of delivery of the Goods to Purchaser. This warranty does not apply to, and Seller makes no warranties express or implied with respect to Goods (i) which, after delivery hereunder, have been repaired or altered in any manner by anyone other than someone who has been authorized and approved in writing by Seller, unless, in Seller's reasonable opinion, such repairs are in no way responsible for the condition complained of, (ii) which are not defective but have worn out during the warranty period or (iii) for which the Purchaser does not have the lot or batch number assigned to such Goods by Seller.

d. THE WARRANTIES SET FORTH IN THIS **SECTION 6** 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, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER'S WARRANTY DOES NOT EXTEND TO AND SHALL NOT BE ENFORCEABLE BY ANY SUCCESSOR, ASSIGN, CUSTOMER OR TRANSFEREE OF PURCHASER OR OF ANY PRODUCTS SOLD BY PURCHASER.

7. **Limitation of Liability.**

a. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE TO PURCHASER FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INDIRECT OR INCIDENTAL LOSS OR DAMAGE OF ANY KIND, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE, WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY.

b. IN NO EVENT WILL THE AGGREGATE LIABILITY OF SELLER RELATED TO OR AS A RESULT OF THE SALE OF THE GOODS, WHETHER FOR

BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY PURCHASER FOR THE GOODS ON WHICH LIABILITY IS ASSERTED.

c. In the event of any accident involving the Goods or occurrence of any warranty claim concerning the Goods, Purchaser must (a) notify Seller promptly in writing, (b) permit Seller to preserve evidence, test the relevant Goods and investigate the cause thereof, (c) give Seller prompt and continuing access to the accident site for inspection and testing and (d) cooperate with Seller by promptly furnishing or granting Seller access to its employees, all relevant information, data, test results, reports, witnesses, and other information relative to any occurrence, accident or claimed defect in the Goods.

8. **Inspection; Claims.** Purchaser must inspect the Goods and report in writing to Seller any claim for non-conforming (with respect to the Specifications) or damaged Goods within five (5) business days of Purchaser's receipt of the Goods. The Goods will be deemed accepted and such claims waived if no such written claim is timely made.

9. **Force Majeure.** Seller will not be liable for any delay or failure in delivery resulting from causes beyond its control, including without limitation, earthquakes, fires, floods, acts of terrorism, strikes or other labor disputes, shortages of labor or materials, accidents to or malfunctions of machinery, acts of sabotage, riots, delay in or lack of transportation or the requirements of any government authority.

10. **Indemnification.** Purchaser will indemnify, defend and hold harmless Seller and its affiliates from and against any and all claims, suits, actions, losses, liabilities, expenses and damages arising out of or related to Purchaser's incorporation of the Goods into another product sold or distributed by Purchaser or use of the Goods in connection with another product sold or distributed by Purchaser.

11. **Miscellaneous.**

a. **Waiver.** No failure or delay by Seller in exercising any right and no course of dealing between Seller and Purchaser will operate as a waiver of rights by Seller.

b. **Assignment.** These Terms will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Purchaser may not assign its rights hereunder without Seller's consent.

c. **Governing Law.** The rights and liabilities of Seller and Purchaser arising out of or relating to this Contract will be governed by the laws of the State of Illinois, without reference to choice of law principles. The parties submit to the exclusive jurisdiction of the federal and state courts sitting in Cook County, Illinois for resolution of any dispute hereunder.