

TERMS AND CONDITIONS OF PURCHASE

Please read these Terms and Conditions of Purchase (these “*Terms*”) carefully. These Terms materially affect the parties’ obligations. RockWell, LLC, a Utah limited liability company d/b/a RockWell Window Wells, or the direct or indirect affiliate purchasing the Offerings (the individual applicable entity, “*Buyer*”) is bargaining for and will do business only pursuant to these Terms, and Buyer’s agreement to purchase goods (“*Goods*”) and/or services (“*Services*,” and together with any Goods, “*Offerings*”) is expressly subject to and conditioned on the seller/provider of the Offerings (“*Seller*”) assenting to these Terms.

- 1. ACCEPTANCE.** This Agreement is an offer to purchase Offerings described on the Purchase Order. Buyer may revoke this offer at any time prior to its acceptance by Seller. Commencement of delivery or other indications of acceptance by Seller will result in a firm contract containing all of these Terms. Buyer’s performance is conditional upon Seller’s assent to these Terms. If any of these Terms are not acceptable to Seller, Seller shall promptly notify Buyer thereof. If Buyer does not receive Seller’s written objection to these Terms within forty-eight (48) hours after Seller receives the Purchase Order from Buyer, or if Seller delivers any Goods or performs any Services, these Terms shall be deemed irrevocably accepted in their entirety by Seller.
- 2. ENTIRE AGREEMENT.** These Terms, together with the email, purchase order, service order or similar form issued by Buyer and referencing these Terms (the “*Purchase Order*,” and together with these Terms, this “*Agreement*”), are intended by the parties to be the final expression of their agreement, and are intended also as a complete and exclusive statement of the terms and conditions thereof. For the avoidance of doubt, the provisions of any quotation, order acknowledgement, invoice, or other writing inconsistent with these Terms will not constitute a part of the contract of purchase and sale, and Buyer’s failure to object to provisions contained in any document or communication from Seller shall not be construed as an acceptance of any such provision or as a waiver of any term of these Terms. WITHOUT LIMITING THE FOREGOING, BUYER HEREBY EXPRESSLY OBJECTS TO ALL TERMS THAT ARE ADDITIONAL, INCONSISTENT OR CONTRADICTORY TO THESE TERMS, REGARDLESS OF WHETHER SUCH TERMS ARE SPECIFIED IN ANY OTHER EMAIL, QUOTATION, ACKNOWLEDGEMENT, INVOICE, CONFIRMATION, OR OTHER DOCUMENT SUPPLIED BY SELLER, INCLUDING WITHOUT LIMITATION THOSE TERMS AND CONDITIONS LIMITING WARRANTIES, LIABILITY, REMEDIES AND INDEMNITY. No additional or contradictory terms will be effective unless expressly agreed to in a writing hand-signed by Buyer. No online or electronic terms or conditions will be binding upon Buyer even though such terms were “accepted” in order to access or use a system, including but not limited to an order entry system.
- 3. PRICE.** Unless otherwise specified on the Purchase Order, the prices quoted and/or charged to Buyer include any applicable federal, state and local taxes, charges or duties. Seller’s price shall not be higher than the price stated on the Purchase Order or the last price quoted by Seller or charged to Buyer, whichever is lower. No additional charges or fees of any kind or nature, including taxes, shipping or packaging charges, travel or other out of pocket expenses, customs, duties or other fees or assessments, will be allowed unless specifically agreed to by Buyer in writing or on the Purchase Order. Seller warrants that the prices charged Buyer on the Purchase Order are no higher than prices charged on orders placed by others for similar services or similar quantities of goods on similar conditions subsequent to the last general announced price change, and Seller agrees that any reduction in the price of Offerings subsequent to the date of the Purchase Order will result in a corresponding reduction in price to the Offerings under this Agreement, effective retroactively to the date of the Purchase Order. If Seller breaches this warranty, the prices of Offerings will be reduced accordingly, retroactive to the date of such breach. If the applicable Purchase Order expressly provides for the reimbursement of any of Seller’s expenses, then, as a condition precedent to receiving reimbursement for any such expenses, Seller must provide Buyer with receipts and other evidence of such expenses reasonably requested by Buyer, and Seller must comply in all respects with Buyer’s expense reimbursement policies as in effect from time to time. No amount of specified compensation will be considered as an estimate but always as a not-to-exceed amount to provide the Offerings in full, which will be lowered to the extent that, if working on a pay-for-time basis, Seller spends less time than contemplated.
- 4. PAYMENT.** Seller acknowledges that payment by Buyer will not constitute acceptance of Offerings nor impair Buyer’s right to inspect Offerings or invoke any of its remedies provided hereunder. Unless otherwise stated on the Purchase Order, payment terms shall be net 45. The invoice payment period and the determination of any discount periods will start on the later of the date (a) Seller’s invoice is received at Buyer’s accounts payable department, or (b) the applicable Goods or Services are received or completed in full at the appropriate location and accepted by Buyer. If the invoice receipt by Buyer is delinquent, or if a pricing discrepancy results when comparing the invoice amount to the amounts listed on the Purchase Order or the Offerings actually received, processing of the invoice may be delayed and Buyer shall nevertheless be entitled to take any applicable cash discount. All amounts of any discounts not subtracted from the purchase price at the time of payment shall accumulate to Buyer’s benefit, and shall be payable to Buyer upon demand together with 6% annual interest from the date of Buyer’s payment to Seller of the purchase price. Seller shall not retain any lien, security interest or other right in any Goods.
- 5. SHIPMENT; RISK OF LOSS.** Unless otherwise specified in this Agreement, all shipment of Goods are EXW (Incoterms 2020) Buyer’s facility. Title and risk of loss will pass to Buyer at the time Goods are tendered for shipment from Seller’s location. Buyer is responsible for arranging for shipment of Goods, including all costs therefor. Goods will be labeled, packed and shipped by Seller in accordance with any instructions by Buyer and in accordance with good commercial practices, to ensure the safe loading, transit, and unloading of Goods, and that no damage results from weather or transportation. No extra charges will be allowed for labeling, packing and shipping unless specified on the Purchase Order. All shipping dates, or dates for performance of Services, are firm, time being of the essence. The quantity of Goods delivered shall not be greater or less than the amount specified in the Purchase Order unless an additional amount is first ordered by Buyer in writing. In the event of any over or under shipment, Buyer shall be entitled to reject any or all of the shipment. Buyer may return excess quantities to Seller at Seller’s sole risk and expense. Whenever any occurrence or event affecting Seller or its subcontractors or suppliers delays or threatens to delay the timely performance of this Agreement, Seller will immediately give written notice thereof to Buyer.
- 6. FORECASTS.** Any forecasts provided by Buyer are non-binding and for planning purposes only. Any reliance on such forecasts by Seller shall be at Seller’s sole risk and expense. Notwithstanding the foregoing, unless Seller objects to a forecast within forty-eight (48) hours of Seller’s receipt of such forecast, Seller represents, warrants, and guarantees that Seller has adequate uncommitted capacity and resources to supply the forecasted amounts to Buyer.
- 7. BLANKET PURCHASE ORDERS.** In the event that the Purchase Order states that it is a blanket purchase order, all quantities listed thereon shall be estimates only, and Buyer reserves the right to increase or decrease the quantity ordered at any time in its sole discretion. Any such Purchase Order shall not create any commitment on the part of Buyer to purchase the full quantity of Goods or Services specified therein. However, with respect to a blanket

purchase order for the purchase of Goods, such blanket purchase order does constitute a binding commitment on Buyer to purchase a quantity of Goods between one unit/part and 100% of Buyer's requirements, with the precise quantity to be determined by Buyer and set forth in release orders or similar written instructions of Buyer or Buyer's authorized agent. Subject to the foregoing sentence, with respect to such Purchase Orders Buyer shall only be obligated to purchase Goods and Services in the quantities and at the times specified in the written instructions of Buyer or Buyer's authorized agent. With respect to any blanket purchase order, Seller commits to supply such quantities of the Offerings as Buyer may from time to time order pursuant to such Purchase Order, at the prices set forth on the Purchase Order, until the expiration of the period set forth in such Purchase Order.

8. CHANGES.

(a) Buyer may, at any time before delivery or performance of the order, make changes in quantities, specifications, delivery destinations and schedules, methods of shipping and packing, or other methods of performance. If such changes cause an increase or decrease in prices or in time required for performance, Seller will notify Buyer thereof, with reasonable detail and support for such changes, within five (5) days of receipt of notice of such change by Seller. If Buyer approves of such proposed change, Buyer shall issue a revised Purchase Order. The revised Purchase Order will constitute a change order, and the definition of the Offerings and, if applicable, the amount of compensation and/or the scheduled completion or delivery date will be revised accordingly. If Seller fails to provide timely notice in accordance with this provision, such change shall be deemed finally and irrevocably accepted by Seller with no change in price or time for performance.

(b) Seller shall not make any changes to any of the terms of this Agreement, or to the components, composition, processes, materials, methods of manufacture, or material sources of supply with respect to any Offerings without first obtaining Buyer's prior written consent. Seller must notify Buyer of any such change prior to shipping any affected Goods or providing any affected Services to Buyer. Changes will not be binding on Buyer unless evidenced by a change order issued and signed by Buyer.

9. TERMINATION.

(a) Time is of the essence with respect to all of Seller's obligations hereunder. Buyer may, in addition to all other remedies available to it, cancel the Purchase Order and/or this Agreement in whole or in part, without liability, if deliveries are not made at the time and in the quantities and manners specified, or in the event of any other breach or failure of any other of these Terms, or upon any actual or alleged insolvency of Seller or the commencement of any related reorganization or other proceeding. Acceptance of any Offerings before or after the specified delivery date will not operate as a waiver of any of Buyer's rights, including its rights to damages for such early or late delivery. In the event of a late shipment, Buyer may require Seller to ship Goods via premium freight at Seller's sole cost and expense. Any provision in the Purchase Order providing for the delivery of Goods in installments shall not be construed as making the obligations of Seller severable.

(b) Buyer may terminate the Purchase Order and/or this Agreement in whole or in part, at any time and from time to time, and for any reason or no reason, without liability; provided, however, that any termination without cause shall require at least twenty-four (24) hours' notice to Seller (email or verbal notice being sufficient). When Seller receives such notice, Seller will take any necessary action to protect the property in Seller's possession in which Buyer has or may acquire an interest, and, to the extent specified in the notice, stop work and the placement of subcontracts under this Agreement and terminate work under subcontracts outstanding hereunder. Any claim by Seller relating in any way to a Purchase Order must be submitted to Buyer within fifteen (15) days after the completion or the effective date of the termination of such Purchase Order. Buyer reserves the right to accept or reject any such claim in whole or in part. Notwithstanding anything to the contrary contained in the Agreement, under no circumstances will Buyer have any liability to Seller relating to standard, non-custom goods that were not shipped by Seller prior to Buyer's termination of the Purchase Order, and under no circumstances shall Buyer be liable for any general, special, indirect, incidental, consequential or punitive damages, or for any attorneys' fees, arising out of or relating to this Agreement.

10. **SURVIVAL; TRANSITION ASSISTANCE.** The parties' rights and obligations that by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, insurance, compliance with laws, warranties, and confidentiality will survive any termination or expiration of this Agreement. Following the expiration or termination of this Agreement for any reason, Seller agrees to provide Buyer with such transition assistance services as may be reasonably requested by Buyer, on an "at-cost" basis.

11. **NON-EXCLUSIVITY.** Nothing herein shall be deemed to require Buyer to purchase Offerings exclusively from Seller. Buyer has the absolute right to purchase goods and services, including Offerings, from sources other than Seller.

12. **COMPLIANCE WITH LAWS.** Seller shall ensure that at all times it has and maintains all licenses, permissions, authorizations, consents and permits that it needs in order to carry out its obligations under this Agreement and that it complies with all applicable statutory and regulatory requirements relating to the manufacture, labeling, packaging, storage, handling and delivery of Goods, and the performance of Services. Seller represents and warrants that it is in compliance with, and will continue to comply with, all applicable laws, rules, regulations, orders, conventions, ordinances, standards, and other governmental and regulatory requirements of the country(ies) of destination and the country(ies) of shipment, or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Offerings, including, without limitation, those relating to environmental matters, the handling and transportation of dangerous goods or hazardous materials, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Seller further represents that neither it nor any of its subcontractors, vendors, agents or other associated third parties will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of Goods or provision of Services under the Agreement. Seller agrees to comply with all applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, and that neither it nor any of its subcontractors, vendors, agents or other associated third parties will engage in any form of commercial bribery, nor directly or indirectly provide or offer to provide, anything of value to or for the benefit of, any official or employee of a governmental authority or of any government-owned, government-controlled or government-affiliated entity to obtain or retain any contract, business opportunity or other business benefit, or to influence any act or decision of that person in his/her official capacity. Seller represents and warrants that Seller is and shall at all times remain in compliance with all laws administered by the U.S. Treasury Office of Foreign Assets Control or any other governmental entity imposing economic sanctions and trade embargoes ("**Economic Sanctions Laws**") against designated countries, entities and persons (each an "**Embargoed Target**"). Seller further represents and warrants that it is not an Embargoed Target or subject to any Economic Sanctions Law, and Seller shall not (a) directly or indirectly export, re-export, transship or otherwise deliver

any goods, including any Goods or any portion of the Offerings, to an Embargoed Target or (b) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law. At Buyer's request, Seller will certify in writing its compliance with the foregoing.

- 13. WARRANTY.** In addition to all warranties prescribed by law, Seller specifically represents, warrants and guarantees that: (a) all Offerings will conform strictly to their descriptions (whether oral or written, including, without limitation, on Seller's website or catalog, or on any proposal or quotation), drawings, any samples and any applicable specifications (including, without limitation, those set forth in the Purchase Order); (b) all Offerings shall be of good merchantable quality and fit for the known purposes for which they are sold, provided that Seller shall have the burden of proving that it was unaware of Buyer's intended purpose, and absent such proof Seller shall be deemed to have known of Buyer's intent to use the Offerings in whatsoever manner Buyer actually uses the Offerings; (c) all Goods shall be free from defects in design, materials and workmanship; (d) all Goods shall be free and clear of all liens, encumbrances and rights of third parties; (e) Seller has good and marketable title to the Goods; (f) all Goods shall be new and not contain any reconditioned parts or materials; (g) each of Seller's employees, agents or representatives assigned to provide Services under this Agreement shall have the proper skill, training and background so as to be able to perform such Services in a competent, workmanlike, and professional manner; (h) all Services shall be performed in a competent, workmanlike, and professional manner, in accordance with all applicable best practices and best industry standards, and Seller shall devote adequate resources to meet its obligations under this Agreement; (i) all Goods and Services shall comply with all applicable federal, state, and local laws, regulations or orders; and (j) each Offering and Buyer's use thereof does not and shall not infringe or misappropriate or contribute to the infringement or misappropriation of any patents, copyrights, trademarks, trade names or other intellectual property or proprietary rights. In addition to the foregoing, Seller hereby assigns to Buyer, and covenants to fully cooperate with Buyer in enforcing, all rights and warranties provided by any third party manufacturer of goods or parts which are incorporated in, are a part of, or are provided to Buyer in connection with, the Offerings. All warranties, including warranties prescribed by law, will run to Buyer, its successors, assigns, and customers, and to users and beneficiaries of Offerings.
- 14. SELLER EXPERTISE.** Seller is an expert fully competent in all phases of the work involved in providing the Offerings under this Agreement. Seller agrees not to deny any responsibility or obligation to Buyer on grounds that Buyer provided recommendations, guidance, reviews, inspections, audits, approval, or assistance with regard to any aspect of this Agreement. Seller acknowledges Buyer's reliance upon Seller's expertise. Any reviews, inspections, acceptance quality levels, approved vendor lists, bill of materials, or approvals by Buyer will not relieve Seller of its obligations under this Agreement, nor waive any rights that Buyer may have. Seller will source and procure all materials and component parts for all of the Offerings in accordance with the requirements of this Agreement, and shall develop and implement a process for continuous improvement with respect to the same. Seller shall implement and maintain a quality management system or process that ensures 100% product conformance to applicable specifications and Buyer requirements. Buyer shall have the right, in its sole discretion, to require that Seller immediately remove any personnel from performing under this Agreement. In such an event, Seller shall, upon Buyer's request, promptly furnish replacement personnel with the requisite skills, training, and experience. Buyer's exercise of, or failure to exercise, its rights under this Section will not in any way limit the obligations of Seller to perform its obligations under this Agreement.
- 15. CERTIFICATES OF ORIGIN; COMPLIANCE WITH POLICIES.** Upon Buyer's request, Seller shall promptly provide Buyer with all certificates of origin or domestic value-added, and all other information related to the costs and places of origin of the Goods and the materials contained in the Goods or used in the performance of the Services, as may be required by Buyer to comply fully with all customs, tariffs, and other applicable governmental regulations. Seller shall comply with all applicable Buyer policies, and all policies of Buyer's customers, that are applicable to Seller and/or the Offerings and that Buyer makes Seller aware of. Without limiting the foregoing, Seller, and all suppliers, vendors, service providers, subcontractors, agents and representatives of Seller, shall (a) comply in all respects with any quality procedures and codes of conduct that may be adopted or updated by Buyer from time to time, and as may be posted to Buyer's website or otherwise made available to Seller from time to time, and (b) ensure that all personnel while on Buyer's site abide by the current procedures and regulations for personnel performing services on a Buyer site and all other reasonable safety, security, and other instructions and directions issued by Buyer, as well as all applicable federal, state, and local laws and regulations.
- 16. SPARE PARTS AVAILABILITY.** Seller will maintain the capability to supply, and shall provide, spare parts (i.e., the entire Goods or portions of the Goods) and technical support for the Offerings during the term of this Agreement and for a period of fifteen (15) years thereafter (or longer period as may be required by law applicable to Buyer or Seller) under the terms and conditions of this Agreement. Seller will give Buyer a last time buy option at the end of such period, and will notify Buyer in writing at least one hundred twenty (120) days prior to the conclusion of such period. Seller will notify Buyer in writing at least one hundred twenty (120) days prior to Seller's withdrawal of any Goods or components thereof, and such withdrawal will not occur during the term of the Agreement or the fifteen (15) year period described in this Section, and will not affect Seller's responsibilities under this Section related to spare parts availability or technical support.
- 17. INSPECTION; ACCEPTANCE; REJECTION.** Offerings purchased hereunder are subject to inspection and approval at Buyer's designated destination. Buyer shall have a reasonable amount of time to complete such inspection, but in no event less than thirty (30) days. Buyer reserves the right to reject and refuse acceptance of Offerings that are not in accordance with Buyer's instructions, specifications, drawings, and data or Seller's warranties (express and implied), or that are otherwise unsatisfactory to Buyer in its reasonable discretion, including after the initial inspection period. If any Offerings are rejected, at Buyer's option, and without limiting any other rights or remedies available to Buyer, (a) Buyer may cancel the Purchase Order without charge or expense to Buyer, Seller shall reimburse Buyer for any amounts paid by Buyer for such rejected Offerings, and Seller shall immediately reimburse Buyer for any damages incurred by Buyer in connection with Seller's provision of such defective Offerings, or (b) Seller will immediately replace all rejected Goods at no extra cost to Buyer, re-perform any rejected Services in a manner acceptable to Buyer, and reimburse Buyer for any damages incurred by Buyer in connection with Seller's provision of such defective Offerings. Payment for any Offerings hereunder will not be deemed an acceptance thereof, and no inspection or acceptance will be deemed a waiver of any rights or remedies. Acceptance of any Offerings that fail to comply with Seller's warranties (including, without limitation, Offerings which fail to meet applicable specifications) shall not constitute an amendment to such warranties or specifications or a waiver of Buyer's right to reject future Offerings that fail to comply with such warranties or specifications.
- 18. RECORDS.** Seller shall maintain complete and accurate records relating to the provision of the Offerings under this Agreement, including records of the time spent and materials used by Seller in providing the Offerings, in such form as Buyer approves. During the period in which Seller is providing Offerings to Buyer hereunder, and for a period of two (2) years thereafter, upon Buyer's written request, Seller shall allow Buyer or Buyer's representative to inspect and make copies of such records and interview Seller's personnel in connection with the provision of the Offerings. Buyer may inspect Seller's facilities and records, and that of Seller's suppliers and any approved subcontractors, at any time from time to time, upon not less than twenty-four (24) hours' prior notice (written, verbal or otherwise).

19. **NO IDENTIFICATION AFTER BREACH.** If Buyer wrongfully rejects or revokes acceptance of any Offering, fails to make any payment when due, or repudiates with respect to any Offering covered by this Agreement, Seller will have no right to identify any goods to the contract after it learns of the rejection, revocation, breach or repudiation.
20. **PRODUCT RECALLS.** Either Buyer or Seller, in consultation with the other, may initiate a product withdrawal, market withdrawal, stock recovery, removal, or recall (a “*Recall*”) with respect to any Goods. Seller will use its best efforts to remove all affected Goods from distribution channels and shall cooperate with Buyer in its efforts associated with any Recall. Seller will promptly notify Buyer of any request or order for a Recall of any Goods by any federal, state, or local authority or regulatory agency, and of any voluntary Recall initiated by Seller of any of the Goods, within twenty-four (24) hours. Seller will, in addition to any other remedies that may be available to Buyer, promptly reimburse Buyer for all costs, expenses (including attorneys’ fees), losses and liabilities incurred by Buyer and/or its affiliates in connection with any Recall.
21. **INDEMNIFICATION.** Seller shall indemnify, defend, and hold Buyer, its direct and indirect parent and subsidiary entities and other affiliates, and its and their respective directors, officers, employees, representatives, agents, direct and indirect customers and product users, and each of the foregoing’s respective successors and assigns, harmless from and against any and all claims, demands, actions, proceedings, damages, losses, liabilities, costs, and expenses, of any kind whatsoever, including all attorneys’ fees, arising from or relating to, or alleged to arise from or relate to, (a) any defect in any Offerings; (b) any failure to comply with specifications in the Purchase Order or with the express and implied warranties of Seller, or any of the terms of this Agreement; (c) Buyer’s enforcement of any provision of this Agreement; (d) any act or omission of Seller, its affiliates, or its or their respective directors, officers, employees, representatives, and/or agents (collectively, the “*Seller Parties*”) related to the provision, sale or use of any Offerings; (e) any violation by any Seller Party or any Offerings, or in their provision, manufacture or sale, of any law, statute, ordinance or administrative order, rule or regulation; or (f) any infringement by any Offering of any patent, trademark, or other trade designation, trade secret, copyright, or other intellectual property right (other than infringement caused solely by specifications provided by Buyer).
22. **BUYER-FURNISHED PROPERTY; INTELLECTUAL PROPERTY OWNERSHIP.** Seller will not disclose to any other party, or use, reproduce, or appropriate any material, tooling, dies, drawing, designs, or other property or data furnished by Buyer (“*Buyer-Furnished Property*”). All Buyer-Furnished Property is being provided for use on an as-is basis, and Buyer makes no representations or warranties with respect thereto, whether express or implied. Title to Buyer-Furnished Property will remain with Buyer at all times. Buyer shall have no obligation to furnish any Buyer-Furnished Property, and Seller shall be solely responsible for obtaining and maintaining the tools and equipment necessary for the fulfillment of its obligations hereunder, including all repair and replacement costs associated therewith. Seller will bear the risk of loss or damage to all Buyer-Furnished Property unless such loss or damage is solely, directly and proximately caused by Buyer. All Buyer-Furnished Property will be returned to Buyer at Seller’s risk and expense upon termination or completion of this Agreement or upon Buyer’s demand, whichever occurs first, unless Buyer otherwise directs. All designs, sketches, patterns, dies, tools, equipment, special appliances, computer programs, plans, documents, interfaces, data, configurations, models, designs, concepts, ideas, patents, trade secrets, and other intellectual property (“*Works*”) paid for directly or indirectly (including as part of the purchase price, whether or not specifically itemized) by Buyer shall be Buyer-Furnished Property and subject to the terms of this provision. Seller agrees, and shall cause its employees and subcontractors to agree, that with respect to any Work that may qualify as “work made for hire” as defined in 17 U.S.C. §101, such Work is a “work made for hire” for Buyer. To the extent that any of the Work does not constitute a “work made for hire,” Seller hereby irrevocably assigns, and shall cause its employees and subcontractors to irrevocably assign to Buyer, in each case without additional consideration, all right, title, and interest throughout the world in and to the Work, including all intellectual property rights therein. As to any Works purchased, furnished or used by Seller in its performance of its obligations under this Agreement which does not become Buyer-Furnished Property under the terms of this Section, Buyer has the option, at any time and from time to time, to purchase from Seller some or all of such Works, and upon the exercise of such option Buyer shall become the owner and entitled to possession of the same. The purchase price shall be limited to the lesser of the fair market value for such Works or the initial cost of such Works less any accumulated depreciation. Seller shall not sell or otherwise dispose of any Works without the prior written consent of Buyer. Seller will not acquire or claim any rights, title or interest in any intellectual property rights, including copyrights, patents, patent disclosures, inventions (whether patentable or not), trade dress, trade names, logos, corporate names, domain names, trademarks, service marks, trade secrets, know-how, specifications, and other confidential information of Buyer.
23. **INTELLECTUAL PROPERTY LICENSE.** To the extent not Buyer-Furnished Property, Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully paid up, fully transferable, royalty-free license to make, have made, repair, have repaired, use and sell the Goods and any invention, improvement or discovery (whether or not patentable) that Seller conceives, develops or first actually reduces to practice in the course of performing the Purchase Order. Seller agrees to and hereby does grant to Buyer: (a) an irrevocable, non-exclusive, fully paid up, fully transferable, royalty free license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, any copyrighted or copyrightable material ordered as Offerings, or incorporated in or supplied as a supplement with any Offerings; and (b) the right to reproduce, use and disclose for any purpose, all or any part of the reports, drawings, blueprints, data and technical information delivered or specified to be delivered to Buyer. In addition, Seller hereby grants to Buyer a perpetual (including after the termination of this Agreement), irrevocable, non-exclusive, fully paid up, fully transferable, sublicensable, royalty-free license to manufacture the Goods, and/or goods incorporating or based upon the Goods, in whole or in part, with or without modification, and/or to have the same manufactured by one or more other or additional suppliers.
24. **SETOFF.** Buyer may set off any amount due from Seller, whether or not under the Purchase Order or this Agreement, against any amount due Seller hereunder.
25. **CONFIDENTIALITY.** If the parties have entered into a non-disclosure and/or confidentiality agreement (the “*NDA*”), the terms of the NDA are incorporated herein by this reference and will control the disclosure of any confidential or proprietary information. If there is any conflict between the terms of the NDA and this Agreement, the terms of this Agreement will prevail to the extent of the inconsistency. If the NDA expires prior to the termination of this Agreement, the NDA is hereby deemed renewed and extended until the termination of this Agreement. If the parties have not entered into such an NDA, the parties agree that the remainder of this Section will apply. All non-public, confidential or proprietary information of or relating to Buyer or Buyer’s direct or indirect affiliates, customers, and suppliers, including without limitation specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates disclosed by or on behalf of Buyer, whether disclosed orally, visually or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” shall be deemed “*Confidential Information*,” is confidential, solely for the use of performing this Agreement, shall be protected to at least the same degree as

Seller's own confidential information (but in no event with less than a reasonable degree of care), and may not be disclosed or copied unless authorized by Buyer in writing, except as otherwise set forth herein. Seller agrees to not disclose the Confidential Information except as legally required (and then only to the minimum extent legally required), and except to Seller's employees who are bound by obligations of confidentiality with respect to such Confidential Information at least as stringent as those set forth herein and who have a need to know such Confidential Information for the purpose of fulfilling Seller's obligations under this Agreement. Seller shall be responsible for any breach of the confidentiality and non-use obligations set forth herein by such employees. Seller may only use the Confidential Information in the performance of this Agreement, and may not use the Confidential Information for any other purpose. Seller shall return to Buyer, or destroy, with such destruction certified in writing to Buyer, within five (5) days of the earlier of a request from Buyer or the termination of this Agreement, all Confidential Information, and all written materials, and copies thereof, including materials stored in electronic media, containing, incorporating, or otherwise based upon, in whole or in part, the Confidential Information. This provision shall survive any termination of this Agreement for any reason, and in the event of any breach or threatened breach of this provision, Buyer shall be entitled, in addition to any other remedies and damages, to injunctive relief without the necessity of paying bond and without being required to prove the existence, amount or insufficiency of damages. This Section does not apply to information that Seller can prove was lawfully obtained by Seller without restriction on a non-confidential basis from a third party.

26. **CYBER ATTACK.** In the event that Seller or any of its personnel become aware of or suspect a data security breach, an unauthorized access, use, loss, theft, damage or acquisition of Buyer's data, or any other event that compromises the security, confidentiality or integrity of Buyer's data ("**Incident**"), Seller shall (a) promptly communicate the nature of the Incident to Buyer; (b) assist Buyer with mitigating the damages resulting from the Incident; and (c) allow Buyer to have sole control over the timing, content, and method of providing notification to the impacted individuals and governmental authorities, if applicable. In addition to any other remedies available to Buyer under this Agreement, in law or in equity, for any Incident resulting, in whole or in part, from the acts or omissions of Seller or its personnel, Seller shall: (i) take any corrective actions necessary to remedy the Incident; and (ii) reimburse Buyer for its costs and expenses relating to the Incident such as (1) Buyer's costs incurred in notifying impacted individuals, governmental authorities, and credit bureaus, (2) Buyer's attorneys' fees and public relations' fees incurred in response to the Incident; (3) Buyer's costs of obtaining credit monitoring services and identity theft insurance for the benefit of the impacted individuals; (4) call center support to notify impacted individuals; (5) all fines, penalties or charges assessed by any governmental entity; and (6) forensic IT services and e-discovery services used by Buyer relating to the Incident, where (1)-(6) are deemed direct damage and are not subject to any caps on liability or exclusion of damages set forth elsewhere in this Agreement or in any other document or agreement (if any).
27. **INSURANCE.** During the term of this Agreement and for two (2) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect in amounts and types that are customary in Seller's industry and satisfactory to Buyer. Buyer shall be named as an additional insured under Seller's insurance policies, and such policies shall be primary and non-contributory in favor of Buyer, and shall include a waiver of subrogation in Buyer's favor. All insurance policies must be underwritten by a company with a minimum A.M. Best Rating of A- VII. Certificates evidencing the required coverages must be furnished to Buyer prior to the commencement of any work and on an annual basis thereafter, and at any additional times upon Buyer's request. Seller shall provide Buyer with thirty (30) days' advance written notice in the event of a cancellation or material change in any of Seller's insurance policies. If Seller fails to maintain the insurance required herein, Buyer may, in its sole discretion, purchase such insurance on Seller's behalf and charge back the cost thereof to Seller, with a reasonable markup.
28. **NOTICES.** Any notice relating to this Agreement must be in writing and will be considered given within three (3) days after it is deposited, postage prepaid, with a registered mail service and addressed to the other party at the address given in this Agreement; or, if delivered by hand, when so delivered. Notices to Seller may be delivered by email to any email address used by an employee of Seller in communicating with Buyer, and will be deemed given when sent to such email address.
29. **SUBCONTRACTING; ASSIGNMENT; DELEGATION.** Seller may not assign, whether voluntarily or involuntarily, this Agreement or any of Seller's rights hereunder nor delegate any of Seller's obligations hereunder without Buyer's prior written consent. Any purported assignment or delegation in violation of this Section will be void. Buyer may assign this Agreement and any of Buyer's rights hereunder and delegate any of Buyer's obligations under this Agreement. If Buyer assigns this Agreement or delegates any obligations under this Agreement (whether in whole or in part), Seller shall, as relates to such part that was assigned or delegated, release Buyer from all liability under this Agreement relating thereto and hold the assignee solely responsible for performance of all such assigned or delegated obligations.
30. **APPLICABLE LAW.** The validity, construction, and enforcement of this Agreement is governed by and interpreted under the laws of the State of Utah, including, without limitation, its provisions of the Uniform Commercial Code. The United Nations Convention on Contracts for the International Sales of Goods (CISG) does not apply to this Agreement. In the event of a dispute involving this Agreement, any legal proceeding must be heard and determined exclusively in a Utah state court or a federal court sitting in Salt Lake County, Utah. Each party irrevocably: (a) submits to the exclusive jurisdiction of such courts; (b) waives any objection to venue, including on the ground of forum non conveniens, to bringing a legal action in such courts; (c) agrees not to bring any legal action relating to this Agreement except in such courts; and (d) agrees that delivery of service of process, summons, notice, or other document in any manner authorized in [Section 28](#) shall be effective delivery of such service of process, summons, notice or other document for any suit, action or other proceeding in any such court. Seller shall pay Buyer any collection fees and all attorneys' fees incurred by Buyer in enforcing this Agreement or defending against any claim for breach of this Agreement. Buyer explicitly reserves its right to a jury trial, as well as its rights to all remedies available to it under applicable law, including, without limitation, all rights to indirect, incidental, consequential, punitive, exemplary and special damages. Unless otherwise instructed by Buyer in writing, Seller shall continue delivery and performance pursuant to these Terms while any dispute relating to this Agreement or the Offerings is pending, and Seller shall not be permitted to withhold shipment or performance in connection with any dispute unless expressly authorized by a final nonappealable judgment of a court of competent jurisdiction.
31. **AMENDMENT; WAIVER.** No amendment or modification of any term or condition will be valid or binding upon Buyer unless approved by Buyer in a writing hand-signed by Buyer. Unless Buyer expressly indicates otherwise in such hand-signed writing, such modification is effective only in that instance and only for the purpose for which it is made and is not to be construed as a modification on any future occasion or of any future order or agreement. Clerical and stenographic errors are subject to correction by Buyer. No waiver by Buyer of any of the terms of this Agreement is effective unless explicitly set forth in a writing signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or

may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- 32. SEVERABILITY.** If any provision of this Agreement is held invalid, prohibited, or unenforceable in any applicable jurisdiction, then as to such jurisdiction only, that provision will be ineffective, but only to the extent legally required. That treatment will not affect the validity or enforceability of: (a) the remaining provisions of this Agreement or (b) any provision of this Agreement in any other jurisdiction.
- 33. INDEPENDENT CONTRACTORS.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement may be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 34. NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 35. INTERPRETATION.** Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of this Agreement, or any document drafted or delivered in connection with the transactions contemplated by this Agreement. Captions and headings in this Agreement are for convenience only, and will be given no effect in the interpretation of this Agreement.

TERMS AND CONDITIONS OF SALE

Please read these Terms and Conditions of Sale (these “*Terms*”) carefully. These Terms materially affect the parties’ obligations. RockWell, LLC, a Utah limited liability company d/b/a RockWell Window Wells, or the direct or indirect affiliate providing the Offerings (the individual applicable entity, “*Seller*”) is bargaining for and will do business only pursuant to these Terms. Seller’s acceptance of orders for the purchase of any goods (“*Goods*”) and/or services (“*Services*” and together with any Goods, the “*Offerings*”) is expressly subject to and conditioned on the buyer of the Offerings (“*Buyer*”) agreeing to these Terms.

- 1. ACCEPTANCE.** Any offer by Seller is expressly limited to these Terms, and any price quotation referencing these Terms expires if not accepted by Buyer within ten (10) days after the date of the quotation, unless otherwise stated by Seller in such quotation. Seller may revoke an offer at any time prior to its acceptance by Buyer. All orders are subject to Seller’s written acceptance of such order. If Buyer’s order is accepted, such acceptance is made only pursuant to these Terms, and Seller’s acceptance of any order is limited to these Terms and conditional on Buyer’s agreement to these Terms. If any of these Terms are not acceptable to Buyer, Buyer shall promptly notify Seller thereof. If Seller does not receive Buyer’s written objection to these Terms within forty-eight (48) hours after Buyer receives the document referencing these Terms from Seller, or if Buyer receives delivery of any Goods or performance of any Services, these Terms shall be deemed irrevocably accepted in their entirety by Buyer.
- 2. ENTIRE AGREEMENT.** These Terms, together with the email, price quotation, order acknowledgement, purchase order or other similar form issued by Seller and referencing or relating to these Terms (together, this “*Agreement*”), are intended by the parties to be the final expression of their agreement, and are intended also as a complete and exclusive statement of the terms and conditions thereof. For the avoidance of doubt, the provisions of any purchase order or other writing inconsistent with these Terms will not constitute a part of the contract of purchase and sale, and Seller’s failure to object to provisions contained in any purchase order or communication from Buyer shall not be construed as an acceptance of any such provision or as a waiver of any term of these Terms. WITHOUT LIMITING THE FOREGOING, SELLER HEREBY EXPRESSLY OBJECTS TO ALL TERMS THAT ARE ADDITIONAL, INCONSISTENT OR CONTRADICTORY TO THESE TERMS, REGARDLESS OF WHETHER SUCH TERMS ARE SPECIFIED IN ANY OTHER EMAIL, ACKNOWLEDGEMENT, PURCHASE ORDER, CONFIRMATION, OR OTHER DOCUMENT SUPPLIED BY BUYER, INCLUDING WITHOUT LIMITATION THOSE TERMS AND CONDITIONS REGARDING WARRANTY, LIABILITY AND INDEMNITY. No additional or contradictory terms will be effective unless expressly agreed to in a writing hand-signed by Seller. Buyer’s order will be non-cancellable by Buyer unless Seller consents thereto in a writing hand-signed by Seller. No online or electronic terms or conditions will be binding upon Seller even if such terms are “accepted” in order to access or use a system.
- 3. PRICE.** Unless Seller specifically agrees to hold prices open for a length of time on Seller’s price quotation, all prices are subject to change without notice to Buyer and all Offerings will be invoiced to and paid by Buyer at Seller’s prices in effect at the time of delivery or performance. Without limiting the foregoing, Seller may increase or decrease prices from time to time based upon increases or decreases in raw materials costs based upon any methodology and/or index determined by Seller, and based upon other factors, including without limitation freight charges and surcharges, changes in cost of labor, and force majeure events. Unless otherwise specified in this Agreement, all prices for Goods are exclusive of freight, shipping, drayage, boxing, and crating charges, both to and from Seller’s facility, and return freight charges for any reusable dunnage materials, and all such charges are the responsibility of, and will be paid by, Buyer. Unless otherwise specified in this Agreement, prices stated in this Agreement do not include any manufacturers, sales, use, excise or VAT taxes, charges or duties, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority on or measured by any transaction between Seller and Buyer, and Buyer shall pay all such amounts. In the event Seller is required to pay any of the foregoing amounts, Buyer shall reimburse Seller therefor. Prices may be increased by any increase in any of the foregoing amounts, as well as any increase in tariffs, duties, or other similar amounts, regardless of whether any such amounts were specifically included in quoted prices. Prices stated in this Agreement may not include reasonable travel or other out-of-pocket expenses incurred by Seller in connection with the performance of any Services, and Buyer shall reimburse Seller for all such expenses.
- 4. PAYMENT.** All payments are due in accordance with the payment terms agreed upon in writing between Buyer and Seller. If no such payment terms have been agreed upon, all payments are due in full net 30 days from the date of Seller’s invoice. Seller reserves the right to require full cash payment in advance or at the time of delivery whenever Seller, in its sole discretion, develops doubt as to Buyer’s financial responsibility; Seller will not in such event be liable for non-performance. Buyer shall incur a service charge if Seller receives payment after the due date, calculated as follows: one and one-half percent (1.5%) of the invoice amount if Seller receives the payment between one (1) and thirty (30) days after the due date; three percent (3%) if Seller receives the payment between thirty-one (31) and sixty (60) days after due date; four and one-half percent (4.5%) if Seller receives the payment between sixty-one (61) and ninety (90) days after due date; and so on. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery or performance of any Offerings if Buyer fails to pay any amounts when due. If Buyer requests any additional processing regarding invoices beyond Seller’s normal procedures (such as third-party sites, web-based portals, customer-specific processes or other special requests), such requests must be approved in writing by Seller and shall be subject to an additional surcharge as determined by Seller.
- 5. SHIPMENT; RISK OF LOSS.** Unless otherwise specified in this Agreement, all shipments of Goods are CPT (Incoterms 2020) Buyer’s facility. Risk of loss will pass to Buyer at the time Goods are delivered at Buyer’s facility or other destination agreed to in writing by Buyer and Seller. In the absence of agreed upon shipping instructions, Seller may use its discretion as to the selection of shipping services and routes, at Seller’s risk and expense. Title to Goods will remain with Seller until Seller receives full payment therefor. All shipping dates, or dates for performance of Services, are estimates only. Seller will use reasonable efforts to meet the estimated shipping or performance date, subject to Buyer’s prompt provision of all necessary, complete and correct specifications, information and data, but Seller may not be held responsible for failure to meet such estimated date. If Seller delivers up to ten percent (10%) more or less than the quantity of Goods ordered by Buyer, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall, and shall pay for such Goods the price set forth in this Agreement, adjusted pro rata.
- 6. FORECASTS.** Buyer will provide to Seller, on a monthly basis, a rolling, written, non-binding 12-month forecast of its intended purchases for each upcoming month. Buyer will use its best efforts to ensure the accuracy of such forecasts, and will promptly notify Seller in writing if Buyer becomes aware of facts which are likely to cause Buyer’s actual purchases to materially differ from those set forth in the most recent forecast. Upon the termination or other conclusion of this Agreement, the parties’ relationship, or Buyer’s intended purchases of a particular Good, Buyer shall purchase from Seller any inventory of such Goods that was produced, and any inventory of raw materials that was obtained, in reliance upon any forecasts or historic purchasing trends of Buyer (including pursuant to any minimum order quantities of Seller’s suppliers). Seller makes no guarantee of its ability to produce any specific

volumes of Goods, whether or not identified in forecasts, and Seller makes no commitments to supply any specified volumes of Goods except such volumes as are explicitly ordered by Buyer pursuant to a purchase order accepted by Seller as described herein.

7. **CHANGES; CANCELLATION.** Requests by Buyer for cancellation, termination, modification, suspension, or delay in shipment of Buyer's order are subject to acceptance or rejection by Seller in its sole discretion. Without limiting the foregoing, such requests will not be accepted on terms that do not fully indemnify, reimburse, and make Seller whole from and against any loss associated therewith. Such indemnity must include recovery of all costs incurred, including normal indirect and overhead charges, and a normal profit. Seller reserves the right to make safety changes to Offerings without Buyer approval to address any actual or potential safety defect in any Offerings or changes in governmental regulations or standards, notwithstanding any previously accepted open purchase orders. Seller shall provide notice to Buyer of any material change impacting any previously accepted open purchase orders within a reasonable period of time thereafter.
8. **TERMINATION.** In addition to any remedies that may be provided to Seller under these Terms or applicable law, Seller may terminate this Agreement or any Order, in whole or in part, without liability and with immediate effect upon notice to Buyer for any reason or no reason at all; provided, however, that any termination without cause shall require at least twenty-four (24) hours' notice to Buyer (email or verbal notice being sufficient). Without limiting the foregoing, Seller may terminate this Agreement or any Order, in whole or in part, without liability and with immediate effect upon notice to Buyer if Buyer (a) fails to pay any amount when due to Seller, whether or not under this Agreement, (b) has not performed or complied with any term of this Agreement, in whole or in part, or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.
9. **SURVIVAL; STATUTE OF LIMITATIONS.** The parties' rights and obligations that by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, compliance with laws, warranties, limitations on liability, and confidentiality will survive any termination or expiration of this Agreement. Notwithstanding any right under any applicable statute of limitations, to the maximum extent permitted by law, no action, proceeding, litigation, or claim of any type or nature, civil, criminal, administrative, regulatory, or otherwise, and whether at law, in equity or otherwise (collectively, "**Claims**"), based upon or arising in any way out of this Agreement or the Offerings, may be brought by Buyer more than twelve (12) months after the date of delivery of the applicable Offerings or, if such Claim does not relate to specific Offerings, more than twelve (12) months after the cause of action has accrued, and Buyer waives the right to file or otherwise bring any such Claim after the expiration of such period.
10. **EXCLUSIVITY.** Seller will be Buyer's sole supplier of the Goods and all substantially similar products until such time as Buyer notifies Seller in writing, at least twelve (12) months in advance, that Buyer intends to no longer purchase the Goods and all substantially similar products from Seller. In the event Seller is unwilling or unable to supply Buyer's entire demand for the Goods, Buyer shall be entitled (subject to Buyer's compliance with the provisions hereof relating to the protection of Seller's intellectual property) to procure replacement products from a third party supplier; provided, however, that such replacement products shall only be purchased in such quantities as Seller is unwilling or unable to supply, and only during such period as Seller is unwilling or unable to supply Buyer's entire demand for the Goods. If a specification or technology change is required for any reason with respect to any Goods, Seller will have the first right of refusal to accommodate the necessary changes and remain Buyer's sole supplier of such Goods.
11. **DUNNAGE REPLENISHMENT.** In the event Seller utilizes any returnable dunnage in connection with the transportation of the Goods, Seller may invoice Buyer for damaged and/or missing dunnage based upon a periodic reconciliation of dunnage shipments versus dunnage returns. The reimbursed cost for such dunnage shall be Seller's actual cost to replace such dunnage, plus a reasonable service charge determined by Seller.
12. **CERTAIN BUYER OBLIGATIONS.** Buyer shall (a) cooperate with Seller in all matters relating to the Offerings and provide access to Buyer's premises, and to such office accommodations and other facilities as Seller requests for the purpose of performing or delivering any of the Offerings; (b) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that Seller deems necessary in order to complete and provide the Offerings in accordance with this Agreement; and (c) provide in a timely manner such customer materials or information that Seller requests in order to complete and provide the Offerings, and Buyer shall ensure that such customer materials and information are complete and accurate in all respects.
13. **COMPLIANCE WITH LAWS.** Buyer shall comply with all applicable federal, state and local laws, regulations, orders, and ordinances. Buyer represents and warrants that Buyer is and shall at all times remain in compliance with all laws administered by the U.S. Treasury Office of Foreign Assets Control or any other governmental entity imposing economic sanctions and trade embargoes ("**Economic Sanctions Laws**") against designated countries, entities, and persons ("**Embargoed Targets**"). Buyer is not an Embargoed Target or subject to any Economic Sanctions Law, and Buyer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver Goods or any portion of Goods to an Embargoed Target, or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law.
14. **LIMITED WARRANTY.** Seller warrants that, at the time of shipment, all Goods will be free from material defects in materials and workmanship and materially conform with any specifications which have been expressly agreed upon in writing, hand-signed by Seller. Seller further warrants that, at the time of performance, the Services will be performed in a professional and workmanlike manner, in all material respects. The warranties expressly provided herein may only be asserted by Buyer and may not be asserted by Buyer's customers or other users or beneficiaries of the Offerings. THIS LIMITED WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTY. OTHER THAN THE FOREGOING WARRANTY, SELLER HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE OFFERINGS (WHETHER GOODS OR SERVICES) INCLUDING ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES ON BEHALF OF SELLER OTHER THAN THOSE EXPRESSLY STATED HEREIN.

Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, provided in connection with, or packaged together with the Offerings. Third Party Products are not covered by the limited warranty set forth in this Section. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

Seller makes no representations or warranties whatsoever with respect to any sample Goods provided to Buyer, whether paid for or provided without charge, and all sample Goods are provided on an AS-IS, WHERE-IS basis. Without limiting the foregoing, Seller makes no warranty that the sample Goods comply with any specifications or Buyer requirements, or that the any future Goods sold to Buyer will be the same as or similar to the sample Goods.

All of Seller's representations and warranties set forth in this Agreement relating to the Offerings will expire and be of no further force or effect on the date that is twelve (12) months following substantial completion of the delivery or performance of such Offerings (the "**Warranty Termination Date**"), and Buyer shall have no right or remedy with respect to any actual or alleged defect in any Offering or breach of any representation or warranty relating thereto unless Buyer provides Seller with written notice thereof, with reasonable detail and specificity, prior to the applicable Warranty Termination Date.

- 15. LIMITATION OF REMEDIES AND DAMAGES.** Buyer shall promptly inspect all Goods upon receipt. Any order discrepancies, shipping errors or freight damage must be noted on the bill of lading at the time of receipt, and written notice thereof, together with photographic evidence thereof taken at the time of receipt, must be provided to Seller within twenty-four (24) hours of receipt of the Goods with respect to which the claim is being made, or all of Buyer's claims and rights with respect to such discrepancies, errors and damage are deemed irrevocably waived by Buyer, and Buyer assumes all liability and responsibility therefor. Such written notice must specify the quantity and condition of the Goods that Buyer received, in reasonable detail. If Buyer believes that any Goods are defective, Buyer shall notify Seller of the same in writing within ten (10) days of Buyer's receipt thereof. Buyer shall follow Seller's instructions with respect to any such defective Goods, including, without limitation, making such Goods available for Seller's inspection or promptly returning such Goods to Seller, at Buyer's sole cost and expense. Buyer will provide full cooperation and support to Seller in determining the root cause of any alleged defect.

With respect to defective Goods, Seller's liability and Buyer's sole and exclusive remedy hereunder will be limited to repair, replacement, or credit, at Seller's option, for any Goods that Seller determines in its reasonable discretion are actually defective. With respect to defective Services, Seller's liability and Buyer's sole and exclusive remedy hereunder will be limited to re-performance or credit, at Seller's option, for any Services that Seller determines in its reasonable discretion were actually defective. Seller will not be liable for a breach of warranty if (a) the defect arises because Buyer fails to follow Seller's oral or written instructions relating to the applicable Offering, including without limitation with respect to the storage, installation, commissioning, use, or maintenance, (b) Buyer or a third party alters or repairs the applicable Goods without the prior written consent of Seller, or (c) the applicable Goods becomes defective or inoperative due to normal use, accident, misapplication, abuse, or misuse; and any of the foregoing will immediately render the warranties provided by Seller null and void.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT (AS DEFINED HEREIN), (a) IN NO EVENT SHALL SELLER (AS DEFINED HEREIN) BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, DIMINUTION IN VALUE, COSTS OF SUBSTITUTE GOODS OR SERVICES, MACHINE WORK, OR LABOR COSTS, ARISING IN CONNECTION WITH OR RELATING TO THIS AGREEMENT (AS DEFINED HEREIN), THE GOODS (AS DEFINED HEREIN), OR THE SERVICES (AS DEFINED HEREIN); (b) SELLER'S (AS DEFINED HEREIN) TOTAL LIABILITY ON ANY CLAIM OF ANY KIND IS LIMITED TO AND WILL IN NO EVENT EXCEED THE PRICE OF THE SPECIFIC GOOD (AS DEFINED HEREIN) OR SERVICE (AS DEFINED HEREIN) WHICH GIVES RISE TO THE CLAIM; AND (c) SELLER'S (AS DEFINED HEREIN) AGGREGATE LIABILITY FOR ALL CLAIMS, DAMAGES, LOSSES AND LIABILITIES OF ANY NATURE ARISING UNDER OR IN ANY WAY RELATING TO THIS AGREEMENT (AS DEFINED HEREIN) IS LIMITED TO AND WILL IN NO EVENT EXCEED THE LESSER OF (1) TEN PERCENT (10%) OF THE TOTAL AMOUNTS PAID TO SELLER (AS DEFINED HEREIN) BY BUYER (AS DEFINED HEREIN) FOR THE GOODS (AS DEFINED HEREIN) AND SERVICES (AS DEFINED HEREIN) SOLD HEREUNDER DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH LIABILITY ARISES, AND (2) \$1,000,000. THE FOREGOING LIMITATIONS SHALL BE VALID AND ENFORCEABLE REGARDLESS OF: (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER SELLER (AS DEFINED HEREIN) WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (iii) ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER (AS DEFINED HEREIN) CONCERNING THE SALE, USE, OR INSTALLATION OF THE GOODS (AS DEFINED HEREIN) OR SERVICES (AS DEFINED HEREIN), (iv) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (v) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

- 16. EXCLUSION OF TORT REMEDIES.** All sales of Goods hereunder are commercial sales transactions, and the parties intend for them to be governed by Article 2 of the Uniform Commercial Code (as adopted by the state set forth in Section 29 below) and related commercial legal principles. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR TO ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT (AS DEFINED HEREIN).

- 17. PRODUCT RECALLS.** Seller expressly retains the right, in its sole discretion, to order and control any recall, repair, replacement or refund program relating to the Offerings, including if mandated by an order of a governmental agency to correct a manufacturing defect affecting the safety of Goods sold. In the event a recall, repair, replacement or refund program is required, (a) Buyer shall fully cooperate with Seller, at Seller's request, in the implementation and administration of any program of recall, repair, replacement or refund, and (b) Buyer shall furnish to Seller such records regarding any program of recall, repair, replacement or refund as Seller shall reasonably request. Subject to the limitations set forth in this Agreement, Seller shall reimburse Buyer for the reasonable and documented out-of-pocket costs and expenses incurred by Buyer in connection with any such recall, repair, replacement or refund program which is caused by Seller's gross negligence, intentional misconduct, or breach of the limited warranties set forth in these Terms, provided that the Warranty Termination Date has not yet occurred with respect to the affected Goods.

Buyer shall notify Seller in a timely manner of any condition known to it that may affect the safety of the Goods, and Buyer shall consult with Seller about any such condition prior to notifying any governmental agency. In no event shall reimbursement under this Section of reasonable and documented out-of-pocket costs include any amounts for lost profits or business goodwill or any other special, consequential, punitive or indirect damages. Nothing in this Agreement shall constitute a waiver or limitation by Seller of any constitutional, statutory, or other right to administrative or judicial review of any request, demand, or order of any governmental agency or body.

- 18. INDEMNIFICATION.** Buyer shall indemnify, defend, and hold Seller, its direct and indirect parent and subsidiary entities and other affiliates, and its and their respective directors, officers, employees, representatives, agents, direct and indirect customers and product users, and each of the foregoing's respective successors and assigns, harmless from and against any and all claims, demands, actions, proceedings, damages, losses, liabilities, costs, and expenses, of any kind whatsoever, including all attorneys' fees, arising from or relating to any actual or alleged claim whatsoever, including without limitation any claim

of infringement of a patent, copyright, trademark, trade secret, or other proprietary right, and claims of product liability, personal injury, property damage, and product defect, which arises out of or is related to Buyer's (or its direct or indirect customers') use of the Offerings, negligence, willful misconduct, violation or breach of any term of this Agreement, fraud, or violation of law, or from Buyer's specifications for the Offerings, except, in each case, to the extent arising from the gross negligence or willful misconduct of Seller.

- 19. INTELLECTUAL PROPERTY OWNERSHIP.** All intellectual property rights, including copyrights, patents, patent disclosures, inventions (whether patentable or not), trade dress, trade names, logos, corporate names, domain names, trademarks, service marks, trade secrets, know-how, specifications, and other confidential information, together with all derivative works and all goodwill associated therewith, and all other rights in and to all the Offerings, documents, work product, drawings, and other materials (whether or not copyrightable) that are delivered to Buyer under this Agreement or prepared by or on behalf of Seller in the course of performing under this Agreement, shall be exclusively owned or otherwise licensed by Seller. No license, transfer, or assignment of proprietary rights from Seller to Buyer will occur as a result of this Agreement or any order. Buyer warrants that any trademarks Buyer requests Seller to affix to any Goods are owned or authorized for use by Buyer. In the event Buyer provides any feedback, suggestions, improvements or ideas pertaining to any Offerings or any other Seller goods or services (collectively, "**Feedback**"), Buyer hereby irrevocably and unconditionally assigns to Seller all of Buyer's right, title and interest in and to such Feedback, and any intellectual property rights relating thereto. Buyer shall not contest, or assist others in contesting, the validity or ownership of Seller's intellectual property.
- 20. TOOLING.** All dies, tools, molds, patterns and the like involved in the manufacture of the Goods are and will remain the property of Seller, except that any dies, tools, molds, patterns and the like specifically ordered and paid for by Buyer, and specifically identified on the applicable Buyer order and Seller invoice as tooling to be owned by Buyer ("**Buyer Tooling**"), will remain the property of Buyer. Seller will return any Buyer Tooling to Buyer upon request after all amounts owed to Seller have been paid in full; provided, however, that if Buyer does not request in writing and accept delivery of the Buyer Tooling within thirty (30) days following the earlier of (a) the expiration or termination of this Agreement, (b) the conclusion of the project requiring the use of the Buyer Tooling, or (c) Seller's written request, then Seller shall thereafter own the Buyer Tooling free and clear of all liens or encumbrances, and Seller may use or dispose of the Buyer Tooling in Seller's sole discretion, and all of Buyer's rights in and to the Buyer Tooling shall cease and be of no further effect. Buyer is responsible for insuring and replacing all Buyer Tooling.
- 21. SECURITY INTEREST.** Buyer hereby grants to Seller and Seller hereby retains a lien on and a security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods sold by Seller to Buyer and all accessories and additions thereto, wherever located, whether now existing or hereafter acquired, as well as all spare parts and components therefor, and all proceeds of the sale or other disposition thereof, including, without limitation, cash, accounts, contract rights, instruments, and chattel paper ("**Subject Assets**"). If requested by Seller, Buyer shall execute one or more financing statements pursuant to the Uniform Commercial Code in a form satisfactory to Seller. In the event Buyer is in default under this Agreement, Seller will have the remedies of a secured party under applicable law, including without limitation the Uniform Commercial Code, and Seller may thereupon enter the premises of Buyer and remove and repossess all Subject Assets. The security interest granted under this Section constitutes a purchase money security interest under applicable law.
- 22. SETOFF.** Seller may set off any amount due from Buyer, whether or not under this Agreement, against any amount due Buyer hereunder.
- 23. CONFIDENTIALITY.** If the parties have entered into a non-disclosure and/or confidentiality agreement (the "**NDA**"), the terms of the NDA are incorporated herein by this reference and will control the disclosure of any confidential or proprietary information. If there is any conflict between the terms of the NDA and this Agreement, the terms of this Agreement will prevail to the extent of the inconsistency. If the NDA expires prior to the termination of this Agreement, the NDA is hereby deemed renewed and extended until the termination of this Agreement. If the parties have not entered into such an NDA, the parties agree that the remainder of this Section will apply. All non-public, confidential or proprietary information of or relating to Seller or Seller's direct or indirect affiliates, customers, and suppliers, including without limitation specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates disclosed by or on behalf of Seller, whether disclosed orally, visually or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," shall be deemed "**Confidential Information**," is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized by Seller in writing. Buyer agrees to maintain and protect the confidentiality of the Confidential Information, and to not disclose the Confidential Information except as legally required (and then only to the minimum extent legally required), and except to Buyer's employees who are bound by obligations of confidentiality with respect to such Confidential Information at least as stringent as those set forth herein and who have a need to know such Confidential Information for the purpose of fulfilling Buyer's obligations under this Agreement. Buyer shall be responsible for any breach of the confidentiality and non-use obligations set forth herein by such employees. Buyer may only use the Confidential Information in the performance of this Agreement, and may not use the Confidential Information for any other purpose. Buyer shall return to Seller, or destroy, with such destruction certified in writing to Seller, within five (5) days of the earlier of a request from Seller or the termination of this Agreement, all Confidential Information, and all written materials, and copies thereof, including materials stored in electronic media, containing, incorporating, or otherwise based upon, in whole or in part, the Confidential Information. This provision shall survive any termination of this Agreement for any reason, and in the event of any breach or threatened breach of this provision, Seller shall be entitled, in addition to any other remedies and damages, to injunctive relief without the necessity of paying bond and without being required to prove the existence, amount or insufficiency of damages.
- 24. CYBER ATTACK.** In the event that Buyer or any of its personnel become aware of or suspect a data security breach, an unauthorized access, use, loss, theft, damage or acquisition of Seller's data, or any other event that compromises the security, confidentiality or integrity of Seller's data ("**Incident**"), Buyer shall (a) promptly communicate the nature of the Incident to Seller; (b) assist Seller with mitigating the damages resulting from the Incident; and (c) allow Seller to have sole control over the timing, content, and method of providing notification to the impacted individuals and governmental authorities, if applicable. In addition to any other remedies available to Seller under this Agreement, in law or in equity, for any Incident resulting, in whole or in part, from the acts or omissions of Buyer or its personnel, Buyer shall: (i) take any corrective actions necessary to remedy the Incident; and (ii) reimburse Seller for its costs and expenses relating to the Incident such as (1) Seller's costs incurred in notifying impacted individuals, governmental authorities, and credit bureaus, (2) Seller's attorneys' fees and public relations' fees incurred in response to the Incident; (3) Seller's costs of obtaining credit monitoring services and identity theft insurance for the benefit of the impacted individuals; (4) call center support to notify impacted individuals; (5) all fines, penalties or charges assessed by any governmental entity; and (6) forensic IT services and e-discovery services used by Seller relating to the Incident, where (1)-(6) are deemed direct damage and are not subject to any caps on liability or exclusion of damages set forth elsewhere in this Agreement or in any other document or agreement (if any).

- 25. FORCE MAJEURE; EXCUSE FROM PERFORMANCE.** Notwithstanding anything to the contrary contained herein, Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any whole or partial failure or delay in fulfilling or performing any term of this Agreement, and Seller may implement price increases due to increased costs, when and to the extent such failure, delay or cost increase is caused by or results from, in whole or in part, acts, events or circumstances beyond Seller's reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, epidemic, pandemic, quarantine, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances (whether or not such events are within the reasonable control of Seller); (h) shortage of adequate power or transportation facilities or raw materials from usual sources (whether or not such events are within the reasonable control of Seller); (i) equipment malfunction or downtime (whether or not within the reasonable control of Seller); (j) unforeseen capacity constraints and/or demand increases; (k) data breaches or cyber-attacks; (l) acts or omissions of Buyer; and (m) other events beyond the reasonable control of Seller. If any such event renders Seller's timely delivery or performance of any Offering impracticable, at Seller's option, (x) the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay, or (y) Seller will be excused from performance and Buyer shall promptly, upon Seller's request, pay Seller for any Offerings then completed (whether fully or partly completed).
- 26. INSURANCE.** During the term of this Agreement and for two (2) years thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect in amounts and types customary in Buyer's industry and satisfactory to Seller. All insurance policies must be underwritten by a company with a minimum A.M. Best Rating of A- VII. Certificates evidencing the required coverages must be furnished to Seller prior to the commencement of any work and on an annual basis thereafter, and at any additional times upon Seller's request. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in any of Buyer's insurance policies. If Buyer fails to maintain the insurance required herein, Seller may, in its sole discretion, purchase such insurance on Buyer's behalf and charge back the cost thereof to Buyer, with a reasonable markup.
- 27. NOTICES.** Any notice relating to this Agreement must be in writing and will be considered given within three (3) days after it is deposited, postage prepaid, with a registered mail service and addressed to the other party at the address given in this Agreement; or, if delivered by hand, when so delivered. Notices to Buyer may be delivered by email to any email address used by an employee of Buyer in communicating with Seller, and will be deemed given when sent to such email address.
- 28. ASSIGNMENT; DELEGATION.** Buyer may not assign, whether voluntarily or involuntarily, this Agreement or any of Buyer's rights hereunder nor delegate any of Buyer's obligations hereunder without Seller's prior written consent. Any purported assignment or delegation in violation of this Section will be void. Seller may assign this Agreement and any of Seller's rights hereunder and delegate any of Seller's obligations under this Agreement. If Seller assigns this Agreement or delegates any obligations under this Agreement (whether in whole or in part), Buyer shall, as relates to such part that was assigned or delegated, release Seller from all liability under this Agreement and hold the assignee solely responsible for performance of all such assigned or delegated obligations.
- 29. APPLICABLE LAW.** The validity, construction, and enforcement of this Agreement is governed by and interpreted under the laws of the State of Utah, including, without limitation, its provisions of the Uniform Commercial Code. The United Nations Convention on Contracts for the International Sales of Goods (CISG) does not apply to this Agreement. Any controversy or claim arising out of or in connection with this Agreement will be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any such arbitration will occur in Salt Lake County, Utah, and will be conducted in the English language. Notwithstanding the foregoing, any claim by Seller for collection of unpaid amounts may be pursued through any available method and in any available venue, including without limitation through litigation in the State or Federal courts located in the State in which Seller's headquarters is located, without first proceeding to arbitration pursuant to this Section, and Buyer hereby irrevocably submits to the personal jurisdiction of such courts. Service of process on Buyer may be made through any form permissible for delivering a notice pursuant to Section 27. Buyer shall pay Seller any collection fees and all attorneys' fees incurred by Seller in enforcing this Agreement or defending against any claim for breach of this Agreement.
- 30. AMENDMENT; WAIVER.** No amendment or modification of any term or condition will be valid or binding upon Seller unless approved by Seller in a writing hand-signed by Seller. Unless Seller expressly indicates otherwise in such hand-signed writing, such modification is effective only in that instance and only for the purpose for which it is made and is not to be construed as a modification on any future occasion or of any future order or agreement. Clerical and stenographic errors are subject to correction by Seller. No waiver by Seller of any of the terms of this Agreement is effective unless explicitly set forth in a writing signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 31. SEVERABILITY.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination will not affect the remainder of this Agreement, which will remain in full force and effect.
- 32. INDEPENDENT CONTRACTORS.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement may be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.
- 33. NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 34. INTERPRETATION.** Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of this Agreement, or any document drafted or delivered in connection with the transactions contemplated by this Agreement.