



(1) **AGREEMENT OF SALE.** These Standard Terms and Conditions apply to all goods (including equipment and parts) ("**Equipment**") and services ("**Services**") provided by JMB & Associates, LLC ("**Seller**") to or for the customer ("**Customer**") under any purchase order, sales contract, quotation, offer, order acknowledgement, or invoice. Customer accepts these Standard Terms and Conditions by signing and returning Seller's proposal or quotation ("**Quotation**"), by sending a purchase order in response to the Quotation, or by instructing Seller to begin work, including requesting shipment of Equipment or performance of Services. Seller's Quotation and these Standard Terms and Conditions shall constitute the entire agreement relating to the Equipment and Services covered by the Quotation (the "**Agreement**"). No terms, conditions or warranties and no agreement or understanding, oral or written, in any way purporting to add to or modify such terms and conditions, whether contained in Customer's purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller's authorized representative. Customer is hereby notified of Seller's express rejection of any terms inconsistent with or additional to the terms and conditions herein or to any other terms proposed by Customer in accepting Seller's Quotation. Neither Seller's subsequent lack of objection to any such terms, nor the delivery of Equipment or performance of Services, shall constitute an agreement by Seller to any such terms.

(2) **TERMINATION OR MODIFICATION.** Accepted orders may be cancelled or terminated by Customer only with Seller's express written consent. All modifications to this Agreement must be by written agreement signed by both parties. Any changes in specifications, quantities, schedules, materials or services requested by Customer shall be subject to an equitable adjustment in the contract price, time of performance, or both. If cancellation or modification is allowed, Customer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of such cancellation or modification, plus a reasonable profit.

(3) **PRICE, SHIPMENT, AND PAYMENT.** All price quotations expire thirty (30) calendar days from the date of the Quotation unless otherwise stipulated in that Quotation. Prices of Equipment scheduled for shipment more than six (6) months after the date of Customer's order shall be subject to escalation. Price and delivery is F.O.B. point of manufacture (Uniform Commercial Code), unless otherwise provided in the Quotation. Unless otherwise agreed to in writing by Seller, and subject to the approval of Seller's credit department, all payments are due net thirty (30) days from the date of invoice with no discounts or retainages. Seller may, at its sole option, have the right to make any delivery under this Agreement payable on a cash or payment guarantee before shipment basis. Any price quoted on a Quotation is based upon the price for the Equipment quoted to Seller by the original manufacturer thereof, which cost may be affected by changes in availability of materials, market conditions, tariffs, or other factors beyond Seller or the manufacturer's control. In the event that the manufacturer of the Equipment increases the price of the Equipment between the date of the Quotation and the acceptance thereof, Seller reserves the right to increase the quoted price of the effected Equipment by an amount up to the increase in price notified by the manufacturer.

(4) **TAXES.** All prices exclude local, state, and federal excise, use, sales or similar taxes, as well as all import and customs taxes, fees, duties, tariffs, and levies or other charges imposed and/or enacted by a government, in each case whether now or hereafter levied or imposed and regardless of how such amounts are designated or imposed, all of which shall be the sole responsibility of Customer ("**Excluded Fees**"). Seller shall endeavor to include Excluded Fees as a separate item on the invoice(s) submitted to Customer. In the event Seller is required to pay, or does pay, any Excluded Fee on behalf of Customer, Seller shall invoice Customer for such Excluded Fees, which invoice shall be due upon receipt.

(5) **DELIVERY.** The delivery date(s) provided by Seller for the Equipment is only an estimate and is based upon prompt receipt of all necessary information from Customer. Seller shall use commercially reasonable efforts to meet the delivery date, but Seller will not be liable for any delay, regardless of cause. Seller reserves the right to ship in advance of any Customer request dates, except those dates stipulated as "Not Before" in writing by Customer. If Customer causes Seller to delay shipment or completion of the Equipment, Seller shall be entitled to any and all extra cost and expense resulting from such delay, including, without limitation, charges for packing, storing, and insuring the Equipment prior to delivery.

(6) **RISK OF LOSS.** Except as otherwise set forth in the Agreement, once the Equipment is shipped, Customer assumes and shall bear all risk of loss, destruction, or damage to the Equipment, and, if the purchase price has not been paid prior to shipment, Customer shall be responsible for obtaining and maintaining insurance against such loss in an amount sufficient to cover the entire purchase of the Equipment until the purchase price has been paid in full.

(7) **SECURITY AGREEMENT.** Title to the Equipment will remain in Seller until the purchase price for the Equipment and any Services related thereto has been paid in full. As security for the full payment of the price for the Equipment and Services, Customer hereby (a) grants to Seller a security interest in and (b) authorizes Seller to execute and file financing statements pertaining to, the Equipment and all proceeds thereof. Customer will notify Seller in writing within thirty (30) days of any change of Customer's name or state of organization and take such other action as Seller deems necessary to protect its security interest. The termination of this Agreement shall not be construed as termination of the security interest hereunder. The Equipment shall remain personal property and retain its character as such no matter in what manner affixed or attached to any structure or property. Until the price for the Equipment and Services is paid in full, Customer shall keep the Equipment free of all liens, taxes, encumbrances, seizure or levy and shall not sell, loan or otherwise transfer possession of the Equipment without the written permission of Seller. In the event of attachment or execution being levied against the Equipment, the bankruptcy of the Customer or any default by Customer in payments due to Seller, Seller, in addition to all other rights and remedies available to it, may seize the Equipment and all payments made to the date of such repossession shall be considered as rent for the Equipment.

(8) **LIMITATIONS OF LIABILITY.** NOTWITHSTANDING ANYTHING IN THE AGREEMENT THAT MAY BE CONSTRUED TO THE CONTRARY (a) IN NO EVENT WILL SELLER, THE MANUFACTURER OF THE EQUIPMENT, ITS SUPPLIERS, NOR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, OR AGENTS (THE "**SELLER PARTIES**"), BE LIABLE FOR ANY DELAY, WORK STOPPAGE, LOSS OF USE OF MACHINERY, LOSS OF TIME, INCONVENIENCE, LOSS OF PROFITS, OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM, ATTRIBUTABLE TO, OR BASED ON DEFECTS IN THE EQUIPMENT AND SERVICES, NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR OTHER TORT, WARRANTY, CONTRACT, INDEMNITY, BREACH OF ANY PROMISE TO REPAIR OR REPLACE THAT MAY BE CONTAINED HEREIN, STRICT LIABILITY OR OTHERWISE, AND (b) THE MAXIMUM AGGREGATE LIABILITY, IF ANY, OF THE SELLER PARTIES FOR ALL DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION ALL CONTRACT DAMAGES, WHETHER RESULTING FROM, ATTRIBUTABLE TO, OR BASED ON DEFECTS IN THE EQUIPMENT AND SERVICES, NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR OTHER TORT, WARRANTY, CONTRACT, INDEMNITY, BREACH OF ANY PROMISE TO REPAIR OR REPLACE THAT MAY BE CONTAINED HEREIN, STRICT LIABILITY OR OTHERWISE WITH RESPECT TO ANY EQUIPMENT AND SERVICES, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PARTICULAR DEFECTIVE EQUIPMENT AND SERVICES.

(9) **FORCE MAJEURE.** Seller will not be liable for any delay in or impairment of performance resulting in whole or in part from a situation outside of Seller's reasonable control, including, without limitation, epidemics, pandemics (including the COVID-19 pandemic), or other human health crisis; fires, floods, earthquakes, or other catastrophes; strikes, lockouts or labor disruptions; wars, riots, civil commotion, vandalism, terrorist acts, or embargo delays; government allocations or priorities; shortages of fuel, labor or materials, failures of transportation equipment, or transportation delays; severe weather conditions; any applicable governmental or judicial law, regulation, order or decree

(10) **JURISDICTION/ATTORNEYS' FEES/JURY WAIVER.**

(a) **GOVERNING LAW & VENUE.** The Agreement will be governed by the laws of the Commonwealth of Wisconsin, without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods, and the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended by the 1980 Vienna Protocol, will not apply. With respect to any dispute, claim or controversy arising under, out of, in connection with or relating to the Agreement or the Equipment or Services provided, or any course of conduct, course of dealing, statements (oral or written), or actions of Seller or Customer relating to the Agreement, or the Equipment or Services, Customer agrees that any action at law, suit in equity or other judicial proceeding for the enforcement of this Agreement or any provision hereof shall be instituted only in the United States federal or state courts located within the Commonwealth of Wisconsin; provided, however, that (i) Seller at its option may elect to sue Customer at its principal place of business or in any jurisdiction in which the Equipment or other assets of Customer may be found, and (ii) in the event an action is brought by a third party against a party hereto with regard to a claim as to which such party hereto may be entitled to indemnification under this Agreement, such party may, at its election, bring a third party action in the forum in which the original action is pending for indemnity against the indemnitor notwithstanding anything to the contrary in this Agreement. In the event of any suit, action or proceeding of the nature referred to in the Agreement, the



prevailing party will be entitled to its reasonable attorneys' fees, costs, and expenses incurred in such dispute, including any appeal thereof.

(b) **ATTORNEYS' FEES.** In the event Seller brings suit to collect any amounts due from Customer relating to the sale of the Equipment or the Services, Seller shall be entitled to recover its cost of collection, including reasonable attorneys' fees, costs and expenses incurred in collecting such amounts, including any appeal thereof.

(c) **JURY TRIAL WAIVER.** TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER AND CUSTOMER HEREBY KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHTS THAT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE, CLAIM, OR CONTROVERSY DESCRIBED IN SECTION 10(A) ABOVE OR OTHERWISE BASED ON THE AGREEMENT OR THE EQUIPMENT OR SERVICES.

(11) **SOFTWARE LICENSE.** To the extent software is provided by Seller under the Agreement, Customer agrees that such software may only be used in accordance with the terms and conditions of the software license agreement that accompanies the software. Customer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software. If Customer is a U.S. Government agency, Customer acknowledges that the software licensed under the Agreement is a commercial item that has been developed at private expense and not under a Government contract. The Government's rights relating to the software are limited to those rights applicable to Customers as set forth herein and is binding on Government users in accordance with Federal Acquisition Regulation, 48 C.F.R. Section 227.7202-1 for defense agencies.

(12) **WARRANTY.**

(a) Customer acknowledges that the Equipment are not of Seller manufacture and are warranted only to the extent that they are warranted by the original manufacturer thereof. Seller shall endeavor to provide Customer with any warranty document or information provided by the original manufacturer, but Seller shall not be liable for any failure to share such documentation or information. Manufacturer warranties are often conditioned upon the Equipment being stored, maintained and operated in accordance with industry standard practices and/or the manufacturer's instructions or manuals, so Customer is encouraged to carefully read all manufacturer warranty documentation. SELLER DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY OTHER WARRANTIES WITH RESPECT TO THE EQUIPMENT AND CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ONLY WARRANTIES MADE WITH RESPECT THERETO ARE THE WARRANTY (IF ANY) PROVIDED BY THE ORIGINAL MANUFACTURER OF THE EQUIPMENT.

(b) Seller warrants that the Services provided will be performed in a workmanlike manner. The sole remedy for any breach of this warranty for the Services in the performance of the Services by Seller without additional charge.

(c) THE WARRANTIES IN THIS SECTION 12 ARE THE ONLY WARRANTIES APPLICABLE TO ANY EQUIPMENT AND SERVICES AND ARE EXPRESSLY IN LIEU OF ANY WARRANTIES OR CONDITIONS OTHERWISE IMPLIED BY LAW (INCLUDING ANY WARRANTIES OTHERWISE IMPLIED BY LAW BY THE MANUFACTURER OF THE EQUIPMENT OR ITS SUPPLIERS), INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES UNDER THIS SECTION 12 SHALL BE THE SOLE REMEDIES AVAILABLE TO CUSTOMER OR ANY OTHER PERSON AND SHALL BE SELLER'S SOLE LIABILITY WITH RESPECT TO BREACH OF WARRANTY. SELLER ASSUMES NO OTHER OBLIGATION OR RESPONSIBILITY WITH RESPECT TO THE CONDITION OF THE EQUIPMENT OR THE SERVICES, AND DOES NOT AUTHORIZE ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER OBLIGATION OR LIABILITY.

(13) **ASSIGNMENT.** Customer may not assign its rights under this Agreement without Seller's prior written consent. Seller may assign its rights under this Agreement, including the right to any moneys due or to become due hereunder, at any time and upon receiving notice of such assignment, Customer shall make payments to the assignee as directed.

(14) **MISCELLANEOUS**

(a) **CHANGE OF CONSTRUCTION AND DESIGN:** Seller reserves the right to change or revise the construction and design of its products or equipment, without liability or obligation to incorporate such changes to the Equipment ordered by Customer unless specifically agreed upon in writing reasonably in advance of the delivery date for the Equipment. Customer agrees to bear the expense of meeting any changes or modifications in local code requirements which become effective after Seller has accepted Customer's order.

(b) **INSTALLATION:** If installation by the Seller is included within the Seller's Quotation, Customer shall provide all of the following at its own expense and at

all times pertinent to the installation: (i) free, dry, and reasonable access to Customer's premises; and (ii) proper foundations, lighting, power, water and storage facilities reasonably required.

(c) **COMPLIANCE WITH LAWS:** Seller's obligations are subject to the applicable export administration and control laws and regulations of the United States. Customer shall comply fully with such laws and regulation in the export, resale or disposition of the Equipment. Quotations or proposals made, and any orders accepted by Seller from a Customer outside the United States are with the understanding that the ultimate destination of the Equipment is the country indicated therein. Diversion of the Equipment to any other destination contrary to the United States is prohibited. Accordingly, if the foregoing understanding is incorrect, or if Customer intends to divert the Equipment to any other destination, Customer shall immediately inform Seller of the correct ultimate destination.

(d) **SEVERABILITY.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions will remain in full force and will be interpreted in order to best attain the parties' intentions as set forth in this Agreement.

(e) **ENTIRE AGREEMENT.** This Agreement, together with any attendant prints and specifications, shall constitute the complete and exclusive agreement between the parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions, guaranties or obligations whatsoever, either expressed or implied, other than as herein set forth or provided for shall be binding on either party. In entering this Agreement, Customer is not relying upon any statements or representations not contained herein.

(f) **NO THIRD PARTY BENEFICIARIES.** The parties hereto agree that the Agreement shall inure only to the benefit of the parties hereto and to no third parties except the manufacturer(s) of any components of the Equipment.

(g) **COUNTERPARTS.** This Agreement may be executed and delivered by electronic means (including electronic signature) and in any number of counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

(h) **NOTICE.** All notices, requests, demands, designations, consents or other communications provided for herein or which shall be made pursuant hereto shall be in writing and shall be deemed to have been given and received when either (i) delivered by registered or certified United States mail, postage prepaid, return receipt requested, (ii) delivered personally, or (iii) upon confirmation of receipt, if delivered by email, in each case to the address for the receiving party noted in the Quotation.