

## TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions of Purchase govern the purchase of goods and/or services by Parts Pak, Inc. Parts Pak, Inc. may amend these Terms and Conditions of Purchase from time to time.

### 1. Defined Terms.

“Business Day” shall mean a day, other than a Saturday, Sunday or federal holiday, when Parts Pak, Inc. is open for business.

“Buyer” shall mean Parts Pak, Inc.

“Buyer Materials” shall mean all materials, samples, equipment and tools, drawings, specifications and data provided by the Buyer to the Seller in connection with the Contract.

“Contract” shall mean the contract between Buyer and Seller for the sale and purchase of the Goods in accordance with these Terms and Conditions.

“Deliverables” shall mean all documents, products and materials developed by the Seller or its agents, contractors and employees as part of or in relation to the Goods and/or Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

“Delivery Address” shall mean the address stated by Buyer on the Order.

“Goods” shall mean the goods of the Seller described in the Order.

“Intellectual Property Rights” shall mean patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Invoice” shall mean the invoice issued by Seller covering the Goods and/or Services in the Order.

“Order” shall mean the purchase order issued by Buyer to Seller.

“Terms and Conditions” shall mean these terms and conditions of purchase, which may be amended from time to time.

“Seller” shall mean company from which Buyer purchases the Goods or Services.

“Specifications” shall mean the description or serial number of the Goods, any related samples, plans and drawings, provided by the Buyer.

“Services” shall mean the services to be provided by Seller under the Contract as provided in the Service Specification.

“Service Specification” shall mean the description or specifications for Services agreed to in writing by Buyer and Seller.

## **2. Basis of Contract.**

2.1 The Order constitutes an offer by Buyer to purchase the Goods and/or Services from Seller in accordance with and subject to these Terms and Conditions, as amended from time to time. The Order is not binding on Buyer until accepted by Seller.

2.1 Seller shall be deemed to have accepted the Order only when it sends Buyer notice of acceptance in writing. The Contract constitutes the entire agreement between the parties.

2.3 Buyer may withdraw the Order at any time before it is accepted by Seller. No contract shall exist except as herein provided.

2.4 The Terms and Conditions apply to the Contract to the exclusion of any other terms that Seller seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## **3. Prices/ Payment.**

3.1 The price of the Goods and/or Services shall be specified on the Order in US Dollars (“USD”), and shall be payable in USD only. All prices quoted by Seller shall be in USD and shall be inclusive of transportation, storage and insurance costs, duties and all taxes.

3.2 No additional charges shall be added to the price specified on the Order for any reason without prior written consent of the Buyer.

3.2 Seller shall provide the Invoice for the Goods and/or Services to Buyer upon delivery of the Goods or rendering of Services. Buyer shall pay all properly-rendered Invoices within sixty (60) days after receipt of the Invoice, unless otherwise agreed to in advance in writing by both parties. Buyer may withhold from payment any amount disputed by Buyer in good faith. In the event of a payment dispute, Buyer shall provide written notice to Seller of the items and amounts in dispute. The parties shall seek to resolve any such disputes expeditiously and in good faith through discussion between the parties’ senior management. Seller shall continue to perform its obligations under the Contract notwithstanding any such dispute. Buyer may at any time, without limiting other rights or remedies it may have, set off any liability of Seller to Buyer against any liability of Buyer to Seller.

## **4. No Exclusivity.**

The Contract is a non-exclusive agreement between Buyer and Seller for the purchase and sale of Goods and/or Services. Buyer is free to engage others to provide Goods or Services similar to or the same as those provided in the Order. Buyer is not obligated to any minimum purchase.

## **5. Termination; Cancellation.**

5.1 Buyer may cancel the Contract, as that term is defined in 13 Pa.C.S.A. § 2106, effective upon written notice to Seller, in the event Seller breaches the Contract. In the event Buyer shall cancel the Contract, Buyer shall retain any and all remedies for breach of the whole Contract or any unperformed balance thereof. Buyer reserves the right to terminate the Contract, as that term is defined in 13 Pa. C.S.A. §2106, effective upon written notice to Seller, in the following events: (i) Seller becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) Seller becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within ten (10) Business Days or is not dismissed or vacated within forty-

five (45) days after filing; (iii) Seller is dissolved or liquidated or takes any corporate action for such purpose; (iv) Seller makes a general assignment for the benefit of creditors; or (v) Seller has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. Without limiting its other rights or remedies, the Buyer may terminate the Contract for any other reason by providing written notice to Seller fifteen (15) days in advance.

5.2 Buyer shall not be liable to Seller for direct, indirect, special or consequential damages, or for loss of production or loss of profits or claims of third parties against Seller, resulting from Buyer's cancellation or termination of the Contract as provided in Sections 5.1 and 15. On cancellation or termination of the Contract for any reason, the Seller shall immediately deliver to the Buyer all Deliverables whether or not then complete, and return all Buyer Materials. Until they have been returned or delivered, the Seller shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

## **6. Assignments.**

6.1 The Buyer may, at any time, assign or otherwise transfer its rights, duties and obligation under the Contract.

6.2 Seller shall not assign or otherwise transfer its rights, duties and obligations under the Contract, except with the prior written consent of Buyer.

6.3 The Contract shall bind and inure to the benefit of the parties' successors and permitted assigns.

## **7. Modification of Terms and Conditions of Purchase.**

These Terms and Conditions may be revised by Buyer from time to time and Seller agrees to be bound thereby. No modifications or additions to these Terms and Conditions shall be binding upon Buyer unless agreed to in writing signed by an authorized representative of Buyer.

## **8. Risk of Loss; Title.**

Title to the Goods and risk of loss or damage passes to Buyer upon completion of delivery to the Delivery Address.

## **9. Force Majeure.**

9.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a force majeure, such as war, fire, flood, other natural disasters or extreme adverse weather conditions, strike, labor trouble, breakage of equipment, accident, riot, act of governmental authority, act of God or any other contingency beyond the reasonable control of the parties interfering with the production, supply, transportation, acceptance or use of any Goods covered by the Contract.

9.2 Seller shall use all commercially reasonable efforts to mitigate the effect of a force majeure event on the performance of its obligations under the Contract.

## **10. General Warranties.**

10.1 Seller shall assign to Buyer any applicable manufacturer warranties extended to Seller. Additionally, Seller warrants (i) that it is the lawful owner of the Goods and has the right to sell same and convey good and merchantable title to same; (ii) that the Goods shall be conveyed free of all claims, liens, security interests or other encumbrances; (iii) that the Goods are of merchantable quality and of good material and workmanship; (iv) that the Goods are free from defects in material, design or workmanship; (v) that the Goods are fit, safe and effective for purposes for which goods of that type are ordinarily used,

as well as for any purposes Buyer has specified or advertised, and the Goods operate as intended; (vi) the Goods conform in all respects to the applicable Specifications; and (vii) that the Goods do not infringe upon the Intellectual Property Rights of any third party. With respect to Services, Seller warrants to Buyer that (i) Seller shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner, in accordance with generally recognized industry standards for similar services and in accordance with any and all Specifications provided by Buyer; (ii) Seller shall devote adequate resources to meet its obligations under the Contract; (iii) Seller's performance of the Services shall not infringe upon or misappropriate any Intellectual Property Rights of a third party; and (iv) Seller shall obtain and maintain all permits, licenses and consents required in connection with its performance under the Contract.

10.2 The warranties expressed in these Terms and Conditions shall be in addition to, and construed as consistent and cumulative with, each other and with all warranties provided, express or implied, by law or equity.

10.3 All warranties shall run to Buyer, its customers and subsequent owners of the Goods and/or Services (as applicable) to which they relate. There are no exclusions, limitations, or disclaimers of warranty other than those that may be expressly recited in these Terms and Conditions. All warranties shall be construed liberally in favor of Buyer.

## **11. Indemnity.**

Seller shall indemnify Buyer, its affiliates, directors, officers, employees, agents, contractors, successors and assigns against all claims, demands, liability, losses, costs and expenses (including attorneys' fees) arising out of, or in connection with (i) any claim made against the Buyer for actual or alleged infringement of the Intellectual Property Rights of a third party; (ii) any violation by Seller or its agents of Section 19; (iii) death, personal injury or damage to property arising out of, or in connection with, defects in the Goods and/or Services; (iv) Services performed by Seller and/or Goods supplied by Seller; (v) Seller's breach of any representation, warranty or any other obligation under the Contract; and (vi) Seller's performance, or failure to perform, under the Contract. This Section 11 shall survive termination of the Contract. Seller's obligation to indemnify will survive the expiration, cancellation or termination of the Contract by either party for any reason.

## **12. Limitation of Liability.**

Buyer shall not be liable to Seller or any third party for direct, indirect, incidental, special, punitive, exemplary or consequential damages, or for loss of production or loss of profits or claims of third parties against Seller, resulting from any cause whatsoever including, but not limited to, Buyer's performance or failure to perform under the Contract.

## **13. Delivery & Acceptance of Goods.**

13.1 Seller shall deliver the Goods to the Delivery Address and on the date(s) provided in the Order. Delivery of the Goods shall not be completed until the Goods have been received and accepted by an agent of Buyer. If no delivery date is specified in the Order, Seller shall deliver the Goods within thirty (30) days of Seller's receipt of the Order. Timely delivery of the Goods is of the essence.

13.2 Seller shall not make partial shipments of Goods to Buyer, unless agreed to in writing by both parties prior to shipment. Seller is responsible for obtaining any import licenses and other consents required for the shipment of Goods at its own expense, and will provide the licenses and consents to the Buyer before shipment.

13.3 All Goods must be packaged, manufactured, labelled, stored, handled and delivered in accordance with all applicable statutory and regulatory requirements. All Goods must be shipped in a manner sufficient to ensure that the Goods shall be delivered in an undamaged condition. Seller shall

provide prior written notice to Buyer in the event Seller requires Buyer to return any packaging materials. Any such return of packaging materials shall be at the sole expense of Seller.

13.4 If Seller delivers either more or less than the quantity of Goods ordered, Buyer reserves the right to accept such Goods, in which case a pro rata adjustment shall be made to the Invoice for the Goods accordingly.

13.5 In the event Buyer agrees to accept installment shipments of Goods, each installment may be invoiced separately. Failure by Seller to deliver one (1) installment in a timely manner or without defect shall entitle Buyer to the remedies set forth in Section 15.

#### **14. Rendering of Services.**

14.1 The Seller shall meet any performance dates for the Services specified in the Order or notified to the Seller by the Buyer.

14.2 In providing the Services, the Seller shall: (i) co-operate with the Buyer in all matters relating to the Services, and comply with all instructions of the Buyer; (ii) perform the Services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade; (iii) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Seller's obligations are fulfilled in accordance with this Contract; (iv) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Seller by the Buyer; (v) provide all equipment, tools and such other items as are required to provide the Services; (vi) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design; (vii) obtain and at all times maintain all necessary licenses and consents, and comply with all applicable laws and regulations; (viii) observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises; (ix) hold all Buyer Materials in safe custody at its own risk, maintain the Buyer Materials in good condition until returned to the Buyer, and not dispose or use the Buyer Materials other than in accordance with the Buyer's written instructions or authorization. The Seller acknowledges that Buyer Materials and all rights therein are and shall remain the exclusive property of the Buyer; and (x) not do or omit to do anything which may cause the Buyer to lose any license, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Seller acknowledges that the Buyer may rely or act on the Services.

#### **15. Buyer Remedies.**

15.1 If the Seller fails to deliver the Goods and/or perform the Services by the applicable date, the Buyer shall, without limiting its other rights or remedies, have one or more of the following rights: (i) to cancel the Contract upon written notice to the Seller; (ii) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Seller attempts to make; (iii) to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party; (iv) where the Buyer has paid in advance for Services that have not been provided by the Seller and/or Goods which have not been delivered by the Seller, to have such sums refunded by the Seller; and (v) to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to meet such dates.

15.2 If the Seller has delivered Goods that do not comply with the warranties provided in Section

10, then, without limiting its other rights or remedies, the Buyer shall have one or more of the following rights, whether or not it has accepted the Goods: (i) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Seller at the Seller's own risk and expense; (ii) to cancel the Contract upon written notice to the Seller; (iii) to require the Seller to repair or replace the rejected Goods; (iv) to require the Seller to provide a full refund of the price of the rejected Goods; (v) to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; (vi) to recover from the Seller any expenditure incurred by the Buyer in obtaining substitute goods from a third party; and (vii) to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Seller's failure to supply Goods in accordance with the warranties provided in Section 10.

15.3 These Terms and Conditions shall extend to any substituted or remedial services and/or repaired or replacement Goods supplied by the Seller.

15.4 The Buyer's rights and remedies under these Terms and Conditions are in addition to its rights and remedies by statute and common law.

#### **16. Resale of Goods.**

Buyer shall be entitled to resell the Goods to third parties.

#### **17. Insurance.**

During the term of the Contract, the Seller shall maintain in effect, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, upon Buyer's request, produce the insurance certificate.

#### **18. Compliance with Laws.**

Seller agrees that, in performing its obligations under these Terms and Conditions, Seller will comply (and will require all of its employees and other agents involved in Buyer's performance under these Terms and Conditions to comply) with all applicable federal, state, local and foreign laws, rules, statutes, regulations, ordinances, and other provisions having the full force and effect of law, and orders, policies, judgments or requirements of any applicable governmental or regulatory authority.

#### **19. Confidential Information.**

A party ("Receiving Party") shall keep in strict confidence all confidential information regarding the other party's ("Disclosing Party") clients or customers, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the Disclosing Party, its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("Confidential Information"). The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Section 19 as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This Section 19 shall survive termination of the Contract.

#### **20. Miscellaneous.**

The Contract constitutes the entire agreement between the parties concerning the subject matter hereof. No statements or agreements, oral or written, made prior to or at the signing hereof shall

supplement or modify the written terms hereof. No amendment, modification, waiver, or release from any provisions hereof shall be enforceable unless it is in a writing signed by the party against which enforcement of same is sought which specifically states that the same is an amendment to the Contract. All notices shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) or email if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated in the Order or as otherwise agreed to by the parties. The only official version of these Terms and Conditions, and all communications related to these Terms and Conditions, will be in the English language.

#### **21. Waiver.**

Except as otherwise set forth herein, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Contract shall operate or be construed as a waiver thereof. Waiver by either party of any default of the other will not operate to excuse the defaulting party from further compliance with the Contract, nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

#### **22. Governing Law**

The Contract shall be construed according to the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws.