

PKG Equipment Inc. Terms and Conditions of Purchase

- 1. Contract of Purchase.** Subject to the terms and conditions stated herein (including all drawings, specifications and other documents attached to the order or referred to in the order.) Vendor agrees to sell to PKG Equipment Inc. (Buyer), and Buyer agrees to purchase from Vendor, the goods and/or services described in the order. If for any reason Vendor shall fail to return to the Buyer a signed acknowledgment copy of the terms and conditions or order, any conduct by Vendor which recognizes the existence of a contract pertaining to the subject matter hereof, shall constitute unqualified acceptance by Vendor of the order and all of the terms and conditions contained herein. The terms of the order and the terms and conditions shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties, supersede any other agreements of the parties with respect to the order unless agreed to by the parties in writing otherwise and may be modified only by written instrument executed by the authorized representatives of both parties. Buyer hereby objects to any terms proposed by the Vendor which add to, vary from, or conflict with the terms herein. If the order has been issued by Buyer in response to Vendor's offer, and if any of the terms herein are additional to or different from the terms of such offer, then the issuance of the order by Buyer shall constitute an acceptance of such offer subject to the express condition that this order constitutes the entire agreement between Buyer and Vendor with respect to the subject matter hereof and the subject matter of such offer. Any reference by Buyer to Vendor's proposal is solely for the purpose of incorporating the description and specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of the order.
- 2. Price.** The price of goods or services shall be the price as shown on the order. The Vendor waives any rights to claims for any additional compensation, charge, cost, expense, or reimbursement whatsoever which is not expressly shown on this order as being an addition to the price. Unless exempt there from, all taxes which Vendor is required by law to collect from Buyer are included in the price stated herein. Vendor agrees to supply appropriate documentation for any claimed tax exemption.
- 3. Invoices.** Unless otherwise agreed in writing, invoices are paid net sixty (60) days on the basis of Vendor's invoice date. Payments of invoices shall not constitute acceptance of the goods, and shall be subject to adjustment for shortages, defects and other failure of Vendor to meet the requirements of this order. Buyer's tender of payment by check is sufficient, provided such check is honored upon presentment.
- 4. Delivery.** Unless otherwise agreed in writing, the goods shall be delivered to Buyer fully assembled, complete, and ready to use, and the Buyer shall accept delivery of such goods or performance of any required services at the location designated on this order. The obligation by Vendor to meet the delivery or performance date is of the essence in this order. Delivery of goods or performance of any required services is not complete until the goods or services have been actually received and accepted by Buyer.
- 5. Excusable Delay.** Vendor shall not be deemed to be in default on account of delays in the delivery of goods or in the performance of services or any other act to be performed by Vendor under the order due to a force majeure event such as an act of God or war (a "Force Majeure Event"); provided, however, that promptly upon the occurrence of any event which may result in a delay in the delivery of goods or performance of services hereunder, Vendor shall give notice thereof to Buyer, which notice shall identify such occurrence and specify the period of delay which may be reasonably expected to result therefrom. In the event delivery of the goods or

performance of services shall be delayed due to a Force Majeure Event and not occasioned by Vendor's fault or negligence for a period of more than fifteen (15) days after the date on which delivery is otherwise required hereunder, Buyer shall have the option to terminate this order upon written notice given to the Vendor within five (5) business days after the expiration of such fifteen (15) day period, and such termination shall discharge all obligations and liabilities of the parties hereunder with respect to undelivered goods, services, or other items to be furnished hereunder.

6. **Warranty.** Vendor expressly covenants and warrants that all goods and services covered by this order shall conform to the specifications, drawings, or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect, that all services will be performed in a good and workmanlike manner and in accordance with the standards of the applicable industry or profession, and that all goods and services of Vendor's design will be free from defect in design. Inspection, test, acceptance, or use of the goods furnished hereunder shall not affect the Vendor's obligation under this warranty, and such warranties shall survive any such inspection, test, acceptance, or use. This warranty shall run to Buyer, its successors and assigns, the Buyer's customers, and the users of Buyer's products. When notified of any nonconformity, Vendor agrees to promptly correct any goods or services not conforming to the foregoing warranty, or at Buyer's option to replace the same, without any cost or expense whatsoever to Buyer. In the event of failure by Vendor to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Vendor, may make such correction, or replace such goods and services and charge Vendor for the cost thereby incurred by the Buyer.
7. **Confidentiality.** You hereby agree to be bound by any confidentiality agreement that PKG may be bound by with its customer.
8. **Indemnification.** Vendor covenants and agrees at all times to protect, defend, hold harmless, and indemnify Buyer, its parent and affiliated companies, and their respective directors, officers, partners, employees, successors, and assigns, from and against any and all claims for loss, damage or injury and from and against any suits, actions, or legal or administrative proceedings of any kind whatsoever, which may be brought or claimed against Buyer, or such other entities or individuals for or on account of any damages or injuries received, sustained, or to be received or sustained by any person, persons, or entities in any manner (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material or workmanship or otherwise, and even though strict liability be claimed) and directly or indirectly caused by incident to or growing out of defects in design, manufacture, or materials used in the goods, negligence in the manufacture or provision of the goods supplied, defects in the performance of the services hereunder, or breach of any obligation of Vendor as herein provided. Vendor further agrees to take upon itself the settlement of all such claims and the defense of any suit, suits, or legal proceedings of any kind brought to enforce such claim or claims and to pay all judgments entered in such suit, suits or legal proceedings, and all costs, including attorney's fees, and other expenses. Vendor agrees that in any instance where such claims in any way affect Buyer's interests under this order or otherwise, Vendor shall not consummate any settlement without Buyer's prior written consent.
9. **Patent Indemnification.** Vendor will indemnify, defend, and hold Buyer harmless from and against any and all liability and expenses, including attorney's fees, arising out of or related to actual or claimed infringement of patent, trademark or copyright laws, misappropriation of trade secrets, breach of confidential relationship, or other right occasioned by the manufacture, sale, or use of the goods or services provided under this order.
10. **Inspection.** The goods and services are subject to Buyer's inspection and approval within a reasonable time after delivery, notwithstanding any prior payment. Buyer, without prejudice to any other rights or remedies, shall have the right to reject defective goods and, at Vendor's risk (notwithstanding the terms of delivery) and expense,

return the same to Vendor or dispose of the same according to Vendor's instructions. Goods so rejected may be returned to the Vendor at the Vendor's expense. Buyer may, at its option, require Vendor to grant a full refund or credit to Buyer in lieu of replacement with respect to any item the Buyer is entitled to reject hereunder. Nothing contained herein shall relieve the Vendor from liability associated with any latent defects in the goods or services delivered by Vendor pursuant to the order.

11. **Changes.** Buyer shall have the right at any time prior to the delivery date of the goods or services to make changes in drawings, designs, specifications, packaging, time and place of delivery, nature and duration of services, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance or otherwise affects any other provision of this order, an equitable adjustment shall be made, and this order shall be modified in writing accordingly.
12. **Cancellation/Termination.** In addition to its other rights hereunder, Buyer reserves the right to cancel this order or any part thereof without further cost or liability if Vendor breaches any of the provisions of this order or if Vendor becomes insolvent or the subject of any proceeding under the law relating to bankruptcy or relief of debtor. Buyer further reserves the right to terminate this order of any part thereof for the sole convenience of the Buyer. If this order is terminated for Buyer's convenience, all reasonable costs incurred to date of termination will be reimbursed, provided Vendor supplies documentation which establishes entitlement thereto.
13. **Assignment.** No right or interest in this order shall be assigned by Vendor without the written permission of the Buyer. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes. Vendor shall remain liable for their performance notwithstanding Buyer's approval of an assignment. Any person or entity to which this order is assigned pursuant to the provisions of Bankruptcy Code 11 USC Section 101 et seq. shall be deemed without further act or deed to have assumed all of the obligations arising under this order on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Buyer an instrument confirming such assumption.
14. **Buyer's Property.** All documents or other materials furnished by the Buyer to Vendor or made by Vendor in connection with the execution of the terms of this order or paid for by the Buyer and all replacements thereof and materials fixed or attached thereto, shall be and remains the property of the Buyer. All of Buyer's property will be kept free of all liens, claims, encumbrances and interests of third parties. Vendor will not substitute any property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property, and will not disclose or otherwise use any of Buyer's property or any property or goods manufactured, developed, or created with the aid of any of Buyer's property, except in filling the orders of Buyer. Upon completion by Vendor of this order, or upon the written request of Buyer, whichever occurs first, Vendor will prepare all of Buyer's property for shipment, and deliver such property to Buyer in the same condition as originally received by Vendor, reasonable wear and tear expected. Buyer shall have the right at all reasonable times, upon prior notice, to enter Vendor's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of any Buyers property. Buyer's property is identified to this order; Vendor shall have the same responsibility for such property as is chargeable to Vendor by law by reason of its position as a bailee. The obligations under this paragraph will survive the cancellation, termination, or completion of the order.
15. **Compliance with Laws.** Vendor warrants that all goods and services supplied hereunder will have been produced or provided in compliance with, and Vendor agrees to be bound by, all applicable federal, state, and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions, orders, ordinances, governmental demands, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the same. In particular, but without limitation, Vendor agrees to comply with applicable federal and

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state laws, rules and regulations, relating to fair employment practices and to the prohibition of discrimination because of age, color, sex, physical or mental handicap, race, nationality, religion, or creed.

16. **Remedies Cumulative.** Buyer's remedies shall be cumulative, and remedies herein specified do not exclude any other remedies. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any items or payment therefore shall not waive any breach.
17. **Title/Liens.** Title to all goods and services for which Buyer has paid fully or in part shall vest in Buyer immediately upon payment thereof. Vendor shall pay for all labor, services, materials, equipment, parts, and other expenses incurred by Vendor or its suppliers in connection with the order, and shall indemnify, hold harmless, and defend Buyer from and against all claims and liens arising out of unpaid accounts.
18. **Insurance.** Vendor represents that it has and will maintain, at Vendor's expense at least the following types and minimum amounts of insurance coverage (a) statutory amounts of workers' compensation; (b) \$1,000,000 in employer's liability; (c) \$1,000,000 (each incident) and \$2,000,000 (aggregate) comprehensive general liability insurance including completed operations, product liability, and blanket contractual liability; and (d) \$1,000,000 combined single limit comprehensive automobile liability. Upon request, Vendor will furnish to Buyer and Buyer's customer a certificate of insurance reflecting such coverage, and naming Buyer and Buyer's customer as additional insureds on the comprehensive general liability and automobile liability policies. The certificates of insurance for all policies shall contain an endorsement in which Vendor's insurer(s) agree to provide Buyer with a minimum of 30 days written notice prior to any cancellation of any policy or any diminution in coverage.
19. **Governing Laws.** This offer shall be construed and enforced according to the laws of the State of New York, excluding its choice of law or conflict of law rules.
20. **Independent Buyer.** Vendor's employees and agents are not the agents, representatives, or employees of Buyer, and Vendor is and shall be an independent contractor with respect to the supply of the goods or services included with in this order. Vendor shall be responsible for all obligations and reports covering social security, unemployment insurance, workers' compensation, income tax and any other report and deductions required by applicable state or federal law with the exception of obligations and reports concerning the income of Buyer. Vendor may not represent Buyer in any dealings between Vendor and third parties.
21. **Risk of Loss.** Vendor shall bear the risk of loss of goods and/or services which are the subject of this order until delivery to, and acceptance thereof, by Buyer.
22. **Survival.** The warranty, and indemnification, defend, and hold harmless provisions hereof shall survive the termination of this order.