

O&K American Terms and Conditions

- TERMS & CONDITIONS OF SALE.** The goods that are the subject of a sale by O & K American Corp. ("O&K American") to Buyer are referred to as the "Products," the services sold by O&K American to Buyer are referred to as the "Services," and items of tangible property on which O&K American performs Services or that result from Services are referred to as the "Service Items." All sales of Products or Services by O&K American are governed by and subject to (a) O&K American's quotation, order acknowledgement, internal order entry set-up or a separate written agreement signed by an authorized representative of O&K American, as applicable, and (b) these terms and conditions, whether or not they are specifically referenced in or incorporated by O&K American's quotation, order acknowledgement, internal order entry set up or the separate written and signed agreement. Any irreconcilable conflict between these terms and conditions and any terms in O&K American's quotation, order acknowledgement, internal order entry set-up, or the separate written and signed agreement shall be resolved in favor of the quotation, order acknowledgement, internal order entry set-up or the separate written and signed agreement. O&K American's acceptance of Buyer's purchase order or commencement of performance shall not constitute acceptance of any Buyer's terms and conditions. **TERMS ADDITIONAL TO OR DIFFERENT FROM THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR BUYER'S STANDARD TERMS AND CONDITIONS OF PURCHASE, ARE DEEMED IMMATERIAL AND HEREBY REJECTED UNLESS OTHERWISE ACCEPTED BY O&K AMERICAN IN WRITING.**
- BUYER'S ASSENT TO THESE TERMS AND CONDITIONS.** Buyer's assent to these terms and conditions shall be conclusively presumed from Buyer's (1) Providing formal purchase to O&K (2) O&K's internal set-up of order entry or O&K American's order acknowledgment or without written objection sent to O&K American within ten (10) days after either (2) instructing O&K American to begin work or ship any of the Products or Service Items after receipt of O&K American's internal order entry set-up or order acknowledgement, (3) acceptance of or payment for all or any part of the Products or Services, or (4) taking any other action evidencing Buyer's acceptance of the benefits of the agreement between the parties. O&K American may commence performance in reliance upon Buyer's acceptance of these terms and conditions, and O&K American will not be obligated to fulfill an order or request for the Products or Services unless O&K American affirmatively internal order set-up and/or acknowledges the order. **BUYER AND O&K AMERICAN AGREE THAT THESE TERMS AND CONDITIONS ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE CONTROLLING AND FINAL TERMS AND CONDITIONS.**
- ENTIRE AGREEMENT.** Except as otherwise agreed to by O&K American in writing, the terms and conditions set forth herein, together with O&K American's quotation, internal order entry set-up, order acknowledgement, or a separate written and signed agreement, as applicable, shall constitute the complete and final agreement between O&K American and Buyer (hereinafter, this "Agreement"), superseding completely any prior oral or written communications.
- MODIFICATION.** No modification of this Agreement or waiver of any of its terms will be binding on O&K American unless clearly expressed in writing and signed by an authorized representative of O&K American. O&K American and Buyer expressly agree that O&K American may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer. O&K American may have entered into specific authorized agreements prior to these September 1, 2022 Terms and Conditions. As of September 1, 2022 these agreements are deemed null and void and only newly executed agreements signed by an authorized O&K American agent after this date may be deemed material in any issues relating to these Terms and Conditions.
- DELIVERY.** Delivery dates are approximate. The failure to meet an indicated delivery date will not constitute a breach of this Agreement or contract. In no event shall O&K American be liable for any claims for labor or for any special, indirect, incidental, or consequential damages including, but not limited to, demurrage charges, cost of shipment, downtime, lost profits

(whether direct or indirect), lost sales, or any other damages resulting from delay in delivery. If O&K American's production or delivery is delayed, O&K American may allocate production and delivery among its customers in a manner it deems reasonable. O&K American reserves the right to change or redesignate any product source listed in this Agreement. ACCEPTANCE OF THE PRODUCTS OR SERVICE ITEMS BY BUYER UPON DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ANY CLAIM FOR DAMAGES ON ACCOUNT OF DELAY IN DELIVERY OR PERFORMANCE.

6. **SHIPMENT AND RISK OF LOSS.** All deliveries are Ex Works (Incoterms 2020) O&K American's facility freight prepaid or freight collect to destination. Unless otherwise agreed in writing, O&K American may, in its sole discretion, select the shipping method, the carrier and the applicable freight charges. If Buyer desires to pick up the Products or Service Items at O&K American's facility, Buyer must contact O&K American to arrange a mutually convenient time for pick up. Buyer shall indemnify and hold harmless O&K American from and against any claims, damages or liabilities suffered by O&K American resulting from any acts or omissions of carrier. Title to the Products and risk of loss to the Products and Service Items shall pass to the Buyer at the point of shipment from O&K American's facility, whether freight prepaid or freight collect to destination, regardless of which party selects the carrier and arranges the freight charges or particulars of shipment. Risk of loss for damage or delay in transit shall be borne by Buyer. Buyer shall file and pursue any claims directly with the carrier related to loss, damage or delay in transit, and Buyer shall not assert such claims against O&K American or deduct from amounts owing to O&K American.
7. **RELEASE OF GOODS FOR SHIPMENT.** Buyer must release the Products or Service Items for shipment within twenty (20) days after O&K American notifies Buyer that those items are ready for shipment. After such 20-day period, Buyer will pay a holding charge determined in good faith by O&K American and/or O&K American may ship the Products or Service Items to Buyer without further notification. Buyer agrees to accept delivery of all shipped Products or Service Items and to pay the applicable price. O&K American has the right to sell or scrap any Products without notice to Buyer if Buyer has not released the Products for shipment within forty-five (45) days after O&K American notifies Buyer that the Products are ready for shipment, and Buyer shall be responsible for any difference between the agreed purchase price and the sale price or the scrap allowance. With respect to any order of a single item of a truckload or less, Buyer must release the entire order for shipment at one time or pay the additional LTL charges required by O&K American.
8. **DELAYS AND CANCELLATIONS BY BUYER.** "Delay/Cancellation Costs" include all labor, materials, overhead, general and administrative costs, restocking charges, surcharges levied on material by outside suppliers, sub-vendor cancellation charges, excess inventory charges, value of storage space, inventory tax charges, banking and finance charges, scrapping and disposal fees, and other harm, costs and charges incurred directly or indirectly by O&K American in connection with a delay or cancellation of an order for the Products or Services. The "Firm Order Period" is determined according to, as applicable, the quotation, internal order entry set-up, order acknowledgement or separate written and signed agreement. If there is no quotation, internal order entry set-up, order acknowledgement or separate written and signed agreement, or if none of those items specifies the Firm Order Period, the Firm Order Period will be determined according to O&K American's then current cancellation and orderbook management policy. If a Firm Order Period cannot be determined in any of the preceding methods, the entire order will be considered to be within the Firm Order Period. Buyer is not entitled, without O&K American's prior written consent, which may be withheld or conditioned in O&K American's sole discretion, to cancel or delay a delivery of the Products or Services for all or any part of an order within the Firm Order Period. O&K American may treat as a cancellation any proposed delay greater than 60 days. If O&K American consents to the cancellation or delay, Buyer shall pay a cancellation or delay charge in an amount determined in O&K American's sole discretion to reflect all applicable Delay/Cancellation Costs, including, at a minimum, a storage charge, inventory carrying costs, financing costs associated with the finished Products or Service Items, work in process and raw materials, and costs of inactive labor, from the original request date until the time of delivery or performance. In the case of cancellation, the charge may also include, at O&K American's sole discretion, a reasonable and equitable profit for O&K American. If O&K American's work on an order requires material from Buyer or a third party selected by Buyer, and O&K American does not timely receive material that strictly conforms to O&K American's requirements, including chemical composition, physical properties and dimensions,



O&K American may delay performance of or cancel the order without liability, and Buyer shall compensate O&K American for all Delay/Cancellation Costs, including for costs incurred and time expended working on non-conforming material.

9. **SPECIFICATIONS.** The material specifications, quality requirements, or any other aspect of the Products and the Service Items or their manufacture (the "Product Specifications") is controlled by O&K American's quotation, internal order entry set-up, order acknowledgement, or separate written and signed agreement. Buyer is not entitled, without O&K American's prior written consent, which may be granted or withheld in O&K American's sole discretion, to make any changes to Product Specifications in O&K American's quotation, internal order entry set-up, order acknowledgement, or separate written and signed agreement. If O&K American consents to the change, O&K American may condition its consent on Buyer's agreement to price adjustments and other compensating payments satisfactory to O&K American. In addition to all other remedies available to it under applicable law, O&K American may refuse to comply with any change to which O&K American has not given its prior written consent.
10. **ORIGINAL EQUIPMENT PRODUCTION.** If this Agreement concerns Products or Service Items for original equipment production, (a) O&K American is not required to supply for the "life-of-program," but instead only for the time specified in this Agreement or, if no time is specified, at O&K American's sole discretion, and (b) O&K American is not required to supply service parts. O&K American is only required to supply service parts if Buyer advises O&K American of those requirements, complete with a detailed release schedule, and O&K American agrees in writing to supply the service parts.
11. **GOVERNMENT CONTRACTS.** If Buyer is purchasing the Products or Services for a government contract or sub-contract, Buyer shall promptly notify O&K American of that fact and of any contractual terms from the government procurement laws and regulations that Buyer is obligated to include in its contracts for such Products or Services. No government procurement provisions will be included in this Agreement unless agreed to in a writing signed by an authorized representative of O&K American.
12. **PURCHASE PRICE.** The purchase price of the Products or Services shall be as stated in O&K American's quotation, price sheet, internal order entry set-up, order acknowledgement, or separate written agreement signed by an authorized representative of O&K American, as applicable. Unless agreed by O&K American in writing, the purchase price does not include shipment costs. If the Products or Service Items are shipped freight prepaid, the charge for freight shall be added to the invoice. Prices are based on and assume Buyer's compliance with all of the terms and conditions of this Agreement, including a promise by Buyer to purchase a particular mix of goods, a certain quantity of goods, or a certain percentage of Buyer's requirements for the goods. O&K American may adjust prices, in its sole discretion, if the circumstances do not coincide with the forgoing assumptions. In addition, O&K American may at any time adjust prices based on any change deemed necessary including but not limited to energy costs, raw material costs, labor costs and exchange rates.
13. **PAYMENT TERMS.** Payment terms are net 30 days, with no discount allowed on transportation charges or surcharges. If O&K American provides a discount, this will only be applicable for invoice payments received within the discount date window. Any payments for any reason after the original shipment discount window will not be subject to any discounts. Surcharges will not be discountable. Interest will accrue on invoices unpaid after the net due date at the annual rate of 12% or the maximum legal contract interest rate, whichever is less. All dates are based on shipping date from O&K American facilities.
14. **SHIPPING WEIGHT.** All weights offered, shown, or calculated with respect to the Products or Service Items, other than actual shipping weights, are approximate estimated weights only. If sale terms are on a weight basis, O&K American's actual shipping weights are to govern the performance of this Agreement. If such an approximate weight is offered, shown, or calculated, Buyer shall nevertheless accept O&K American's shipping weights as the basis of full and complete delivery, and make payment therefor. Permissible over/under shipment is based on order quantity ordered as follows:

- less than 19,999 lbs. = 20%
- 20,000 lbs. to 39,999 lbs.: = 15%
- 40,000 lbs. and over = 10%

15. **SURCHARGES; PRICE ADJUSTMENTS.** For purchases made pursuant to a separate written agreement signed by an authorized representative of O&K American, if O&K American announces a surcharge, such surcharge shall become effective for the Products or Service Items scheduled for shipment beginning on the date set forth in O&K American's announcement of such surcharge or, if there is no such date, immediately upon such announcement. For all other purchases, including, but not limited to, spot purchases: (i) if O&K American announces a general price increase, such price increase shall become effective for the Products or Service Items scheduled for shipment beginning on the date set forth in O&K American's announcement of such price increase or, if there is no such date, immediately upon such announcement; and (ii) if O&K American announces a surcharge, such surcharge shall become effective for the Products or Service Items scheduled for shipment beginning on the date set forth in O&K American's announcement of such surcharge or, if there is no such date, immediately upon such announcement.
16. **TAXES.** Prices do not include any taxes or other assessments. All taxes, duties, fees, tariffs, assessments or other charges of any kind imposed by any federal, state, municipal or other governmental authority which O&K American is required to collect or pay with respect to the provision, production, sale or shipment of the Products or Services shall be the responsibility of Buyer. Buyer agrees to pay all such taxes and further agrees to reimburse O&K American for any such payments made by O&K American. Buyer hereby affirms that it is purchasing the Products referenced herein for resale, and/or that Buyer is not the end user of the Products, so as to be exempt from any otherwise applicable sales tax.
17. **FAILURE OF PAYMENT.** If Buyer fails to make payment in full or in part when due or refuses to pay any applicable price increases or surcharges, O&K American shall have the right to: (i) immediately suspend performance and cancel the unfinished portion of any outstanding orders, (ii) declare all unpaid amounts for the Products or Service Items delivered immediately due and payable, and (iii) withhold further deliveries. If O&K American elects to proceed with an order after the suspension of performance, O&K American shall have an extension of time for performance as is necessitated by the suspension. O&K American shall have the right to enforce payment of the full purchase price, including any price increase or surcharge, for Products or Service Items already ordered, delivered or in process. Buyer shall reimburse O&K American for all costs of collection, including reasonable attorney's fees, incurred as a result of Buyer's failure to make payments when due.
18. **BUYER'S FINANCIAL CONDITION.** All new customers must supply a current financial statement, five trade references, and completed credit questionnaire. O&K American shall have the right, by written notice, to suspend performance, terminate this Agreement, cancel any order, modify any payment terms, or require full or partial payment or adequate assurance of performance from Buyer, without liability to O&K American, in the event of a material adverse change in the Buyer's financial condition or if reasonable grounds for insecurity arise with respect to Buyer's performance of this Agreement, evidence of which might include, among other things, (i) a default under any of Buyer's financing agreements, (ii) Buyer's inability to obtain financing, (iii) a reduction in Buyer's credit rating by a recognized rating agency, (iv) Buyer's insolvency, (v) the filing of a bankruptcy by or against Buyer (whether voluntary or involuntary), (vi) the appointment of a receiver or trustee for Buyer, (vii) the execution by Buyer of an assignment for the benefit of creditors, (viii) the failure by Buyer to make a payment to O&K American when due, or (ix) any other event which raises reasonable doubts as to Buyer's creditworthiness. The modifications O&K American may make to payment terms include shortening the payment period, requiring advance payment, or requiring payment of cash on delivery. O&K American shall notify Buyer in writing of any modifications to payment terms, which may be made retroactive to include amounts then accrued but unpaid. O&K American reserves the right to cancel Buyer's credit at any time for any reason, without notice. The foregoing remedies are in addition to O&K American's other rights and remedies under this Agreement and under applicable law, including Section 2-609 of the Uniform Commercial Code.
19. **SETOFF.** O&K American shall have the right to credit toward the payment of any monies that may become due Buyer hereunder any amounts which may now or hereafter be owed to O&K American or any of its subsidiaries or affiliates. Buyer shall pay O&K American's invoices without discount, setoff, or reduction for any reason, including asserted warranty claims or other claims of non-performance by O&K American.

20. **ACCORD AND SATISFACTION.** Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements or documents, shall be applied by O&K American at their discretion against the amounts owing by Buyer with full reservation of all O&K American's rights and without an accord and satisfaction of Buyer's liability.
21. **LIMITED WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN O&K AMERICAN'S QUOTATION, ORDER ENTRY SET-UP, ORDER ACKNOWLEDGEMENT OR SEPARATE WRITTEN AND SIGNED AGREEMENT, O&K AMERICAN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED. AT O&K AMERICAN'S DISCRETION, BUYER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE CONFORMANCE OF ANY PRODUCTS OR SERVICE ITEMS FURNISHED BY O&K AMERICAN UNDER THIS AGREEMENT SHALL BE LIMITED TO EITHER: (1) REPLACEMENT OF SUCH PRODUCTS OR SERVICE ITEMS AT THE POINT OF SHIPMENT FROM O&K AMERICAN'S FACILITY, OR (2) REPAYMENT OF OR CREDIT AGAINST THE PURCHASE PRICE OF SUCH PRODUCTS OR SERVICE ITEMS UPON AUTHORIZED RETURN THEREOF.** In the event O&K American has authorized Buyer to scrap all or any portion of the Products or Service Items, the scrap allowance is to be credited to O&K American. The employees and representatives of O&K American are not authorized to make any statement or representation as to the Products or Service Items inconsistent with this Agreement and no such statements made will be binding upon O&K American or be grounds for any claim.
22. **NON-CONFORMING GOODS.** No claim for damages for non-conforming Products or Service Items will be allowed unless Buyer provides O&K American with written notice of the claim within sixty (60) days of the date the Products or Service Items were delivered to Buyer. To assert such a claim, Buyer must (a) at O&K American's request, return to O&K American 100% or, if agreed by O&K American, a lesser but still statistically relevant percentage of the Products or Service Items claimed to be non-conforming, and (b) provide reasonable evidence to support the claim, including, if requested by O&K American, results of diagnostic tests, evaluations and investigations performed by Buyer or Buyer's customer. Products or Service Items for which damages are claimed shall not be returned, repaired, or discarded without O&K American's prior written consent. If requested by O&K American, the non-conforming Products or Service Items must be returned to O&K American at Buyer's expense within ten (10) days of O&K American's request. No claims, rejections or returns for non-conforming Products or Service Items will be permitted unless Buyer cooperates in full with O&K American's technical personnel to determine the cause of the non-conformance. The maximum value of any claim or request of reimbursement by the Buyer from O&K American shall be the invoice price paid for the involved and non-conforming material.
23. **SHORTAGE OF GOODS OR DAMAGED GOODS.** Claims by Buyer with respect to shortage of Products or Service Items invoiced or for damaged Products or Service Items must be made to O&K American in writing no later than sixty (60) days from the date the Products or Service Items were delivered to Buyer. All claims must be made only for substantial cause, must be in writing, and must specify the reason(s) for the claim. **THE FAILURE TO NOTIFY O&K AMERICAN OF ANY CLAIM WITHIN THE TIME PERIOD SPECIFIED BY THIS SECTION SHALL CONSTITUTE A WAIVER OF AND BAR SUCH CLAIM. O&K AMERICAN SHALL INCUR NO LIABILITY FOR SHORTAGE OR DAMAGE ALLEGED TO HAVE OCCURRED OR EXISTED AT OR PRIOR TO DELIVERY TO THE CARRIER UNLESS BUYER SHALL HAVE ENTERED FULL DETAILS THEREOF ON CARRIER'S DELIVERY RECEIPT WHICH MUST BE SIGNED BY THE CARRIER'S AGENT. O&K AMERICAN MUST BE GIVEN AN OPPORTUNITY TO INVESTIGATE THE CLAIM BEFORE BUYER DISPOSES OF THE PRODUCTS OR SERVICE ITEMS. ANY DAMAGED PRODUCTS OR SERVICE ITEMS SHALL NOT BE RETURNED, REPAIRED OR DISCARDED WITHOUT O&K AMERICAN'S WRITTEN PERMISSION.**
24. **SPECIAL CONDITIONS FOR NON-PRIME AND SECONDARY PRODUCT SALES.** Notwithstanding anything in this Agreement to the contrary, the following special terms and conditions shall apply to all sales of non-prime and secondary products: (a) any descriptions, samples and specifications for such products are not warranted by O&K American to be accurate or complete and O&K American shall not be responsible for the consequences of any inaccuracies, insufficiencies or omissions in such descriptions, samples and specifications; (b) such products are sold on an "as is" basis, Ex Works

- (Incoterms 2020) O&K American's facility, unless otherwise specified by O&K American; (c) deficiencies of quality, character, size or condition shall not constitute grounds for claim against O&K American and no such claims shall be honored; (d) O&K American shall not in any event be liable for transportation or handling costs or for the costs of any work done or materials furnished by Buyer or anyone with respect to the products sold or for any incidental or consequential damages in contract, in tort or otherwise to Buyer or anyone else or for any injury to person or property by reason of any deficiencies or alleged deficiencies in such products or any failure or alleged failure of such products to meet applicable descriptions or specifications; (e) Buyer agrees to indemnify and hold harmless O&K American from and against all claims, demands or actions in contract, in tort or otherwise, including the defense thereof, brought against O&K American, whether based on an act, omission or negligence of Buyer, or act, omission or negligence of O&K American, in connection with the manufacture, sale, or use of the products, or upon any defect in the products, whether or not caused by O&K American, its agents or employees; and (f) O&K American reserves the right to reject any or all bids or withdraw any products from sale.
25. **MECHANICAL PROPERTIES; CHEMICAL ANALYSES.** O&K American makes no warranty with respect to data referring to mechanical properties or chemical analyses of tests performed on specimens of the Products or Service Items. Any data referring to mechanical properties or chemical analyses are the result of tests performed on specimens obtained from specific locations on the Products or Service Items in accordance with proscribed sampling procedures.
26. **TECHNICAL ADVICE.** O&K American assumes no obligation or liability for any technical advice furnished to Buyer, including without limitation technical advice with respect to the use of the Products or Service Items, all such technical advice being given and accepted at Buyer's risk. O&K American will not be liable for any damages of any kind arising out of or relating to the use of or the inability to use the information provided, including but not limited to any special, indirect, incidental or consequential damages including, without limitation, demurrage charges, cost of shipment, downtime, lost profits (whether direct or indirect), or lost sales, whether foreseeable or not, and even if O&K American has been advised of the possibility of damages.
27. **INTELLECTUAL PROPERTY.** Nothing in this Agreement is to be construed as a grant or assignment of any license or other right to Buyer of any of O&K American's or its affiliates' intellectual property rights, whether patent, trademark, trade secret, copyright or otherwise. All improvements and developments related to the Products or the efforts of O&K American and Buyer will be owned exclusively by O&K American, and Buyer shall reasonably cooperate with O&K American in confirming that result.
28. **CONFIDENTIALITY.** Any pricing, other sensitive commercial information, specification details or manufacturing process information provided by O&K American to Buyer is proprietary to O&K American and shall be held in confidence by Buyer, shall only be used by Buyer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without O&K American's prior written consent. Buyer shall be liable for any loss to O&K American or commercial gain by others from unauthorized use of confidential information occasioned by Buyer's failure to comply with this provision.
29. **AUDIT.** Unless otherwise agree to in writing by an authorized representative of O&K American, Buyer shall have no right to audit any books or records of O&K American and Buyer shall have no right to enter into any facility owned or controlled by O&K American.
30. **LIMITATION OF LIABILITY.** O&K AMERICAN'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES, AND UNDER NO CIRCUMSTANCES SHALL O&K AMERICAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DEMURRAGE CHARGES, COSTS OF SHIPMENT, DOWNTIME, LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOST SALES, DAMAGE TO EQUIPMENT, OR CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES FOR DAMAGES OR PENALTIES, WHETHER OR NOT BUYER IS LEGALLY OBLIGATED TO PAY THEM. O&K AMERICAN'S LIABILITY HEREUNDER SHALL BE LIMITED TO EITHER: (1) THE OBLIGATION TO REPAIR OR REPLACE, AT O&K AMERICAN'S SOLE DISCRETION, ONLY THOSE PORTIONS OF THE PRODUCTS OR SERVICE ITEMS PROVEN TO HAVE FAILED TO MEET IN MATERIAL RESPECT THE

SPECIFICATIONS ON THE O&K AMERICAN'S QUOTATION, ORDER ENTRY SET-UP, ORDER ACKNOWLEDGEMENT, OR SEPARATE WRITTEN AND SIGNED AGREEMENT AT THE TIME OF SHIPMENT FROM O&K AMERICAN'S FACILITY, OR (2) REPAYMENT OF OR CREDIT AGAINST THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES. O&K AMERICAN AND BUYER EXPRESSLY AGREE TO THIS ALLOCATION OF RISK AND THE PRICE STATED FOR THE PRODUCTS OR SERVICES IS CONSIDERATION FOR THE LIMITATION ON O&K AMERICAN'S LIABILITY. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXCLUSIVE REMEDY DESCRIBED IN THIS SECTION FAILS ITS ESSENTIAL PURPOSE.

31. INDEMNIFICATION. Buyer agrees to indemnify, defend and hold harmless O&K American, its directors, officers, employees, agents, successors and assigns from and against any and all damages, losses, expenses, costs (including without limitation reasonable attorney's and accountant's fees), claims, suits, actions, judgments or other liability asserted against or incurred by O&K American arising out of (a) Buyer's breach of its obligations hereunder, (b) Buyer's negligence or misconduct, or (c) Buyer's misuse or misapplication of the Products or Service Items or damage to the Products or Service Items caused by Buyer or its employees, agents or customers.
32. FORCE MAJEURE. O&K American shall not be responsible for cancellation or delay in delivery or performance resulting, in whole or in part, from causes beyond its reasonable control, including, but not limited to: acts of God; acts of Buyer; strikes or other labor disturbances regardless of whether or not O&K American is capable of settling such strike or disturbance; mill or facility conditions; temporary or permanent mill or facility closures; equipment failure; inability to obtain fuel, material, or parts; war; acts of terrorism; sabotage; riot; delays in transportation; repairs to equipment; natural disasters; epidemics; floods; fires; action of governmental authorities (valid or invalid); severe weather conditions; accidents; explosions; failure of or inability to obtain power, raw materials, suppliers, labor, equipment, or transportation; a court or administrative injunction or order; or any other contingency the non-occurrence of which was a basic assumption on which this Agreement was made.
33. GOVERNING LAW; FORUM SELECTION. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Buyer, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction of the state and federal courts having authority over the territory of Cook County, Illinois for any litigation which may arise out of or be related to this Agreement or the purchase or use of the Products or Services. Any action brought in any such court may not be transferred or removed to any other court. Buyer waives any objection based upon forum non-conveniens or any objection to venue of any such action.
34. STATUTE OF LIMITATIONS. BUYER AND O&K AMERICAN AGREE THAT, UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT OR THE SALE OF THE PRODUCTS OR SERVICES MUST BE BROUGHT WITHIN THREE MONTHS AFTER THE DATE ON WHICH THE PRODUCTS OR SERVICE ITEMS IN QUESTION WERE DELIVERED TO BUYER OR THE DATE ON WHICH THE EVENT GIVING RISE TO THE ACTION OCCURRED, WHICHEVER IS EARLIER.
35. DISPUTE RESOLUTION. Buyer and O&K American will attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement or the breach thereof. If a dispute should arise, BUYER AND O&K AMERICAN AGREE TO SUBMIT THE DISPUTE TO MEDIATION. BUYER AND O&K AMERICAN FURTHER AGREE THAT THEIR PARTICIPATION IN MEDIATION IS A CONDITION PRECEDENT TO ANY PARTY PURSUING ANY OTHER AVAILABLE REMEDY IN RELATION TO THE DISPUTE. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. Buyer and O&K American agree that the entire mediation procedure will be confidential. Buyer or O&K American must give written notice of their desire to commence mediation, and a mediation session must take place within forty-five (45) days after the date such notice is given. The mediation shall be attended by representatives of each party with authority to resolve the dispute, and counsel for the parties shall not attend the mediation unless otherwise agreed to by the parties. Buyer and O&K American will jointly appoint a mutually acceptable and neutral mediator. If Buyer and O&K American are unable to agree upon the appointment of a mediator within seven (7) days after notice of desire to mediate is given, Buyer or O&K American

may apply to the American Arbitration Association for appointment of a mediator. The mediation shall be held in Chicago, Illinois. Buyer and O&K American agree that the expenses of mediation shall be borne equally by both parties. Buyer and O&K American agree that arbitration will not be used to settle a dispute arising out of or relating to this Agreement or the breach thereof.

36. **NONWAIVER.** The failure of O&K American to enforce any of the provisions of this Agreement shall not be construed as a waiver of O&K American's right to enforce each and every provision hereof. O&K American reserves the right to enforce these terms and conditions at any time and none shall be deemed waived unless such waiver is in writing signed by an authorized representative of O&K American. O&K American's rights and remedies set forth in this Agreement are in addition to all legal and equitable rights and remedies available to O&K American.
37. **ASSIGNMENT OR DELEGATION.** Buyer shall not assign or delegate any or all of its rights or obligations under this Agreement without the prior written consent of O&K American, and any attempt to do so will be ineffective.
38. **NO THIRD-PARTY RIGHTS.** This Agreement is for the sole and exclusive benefit of the parties hereto and their permitted successors and assigns. Nothing expressed or referred to in this Agreement will be construed to give any other person any legal or equitable right, remedy or claim under or with respect this Agreement.
39. **INDEPENDENT PARTIES.** O&K American and Buyer are independent parties and nothing in this Agreement shall make either party an agent, partner, joint venturer/ventures, or legal representative of the other.
40. **HEADINGS.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
41. **SEVERABILITY.** If any provision or part of a provision of this agreement is declared invalid, illegal, or unenforceable under applicable law, the affected provision will be considered omitted or modified to conform to applicable law. The validity, legality, and enforceability of all other remaining provisions or parts of provisions will remain in full force and effect.
42. **INTERNATIONAL TRADE.** O&K American makes no representation with respect to the country of origin, qualification for duty preference or similar program, specific Harmonized Tariff Schedule Number, export jurisdiction, U.S. Munitions List category, Export Control Classification Number, or export authority of any good. O&K American retains all of its duty drawback rights, and any attempt by Buyer to transfer any such rights will be void. Buyer shall not, itself or by any freight forwarder, customs broker or other agent or third party under Buyer's direction or control, designate O&K American as the U.S. Principal Party in Interest (as defined in the U.S. Foreign Trade Regulations, 15 CFR Part 30) or file the Electronic Export Information with U.S. Bureau of Census ("EEI"), unless otherwise agreed in writing by an authorized representative of O&K American. If Buyer files an EEI without the prior written consent required by the preceding sentence, then: (i) the EEI will be considered to have been made without O&K American's authority or permission, and any false statements to the government will be considered to have been made by Buyer or its agent, as applicable, (ii) any affected transaction will be considered to be a routed export transaction, such that Buyer or its agent will be considered the U.S. Principal Party in Interest and exporter of record (as defined by the Foreign Trade Regulations and the Export Administration Regulations) for those transactions, (iii) Buyer shall assume all of the responsibilities of the exporter of record for any such transactions; and (iv) O&K American will have no responsibility as the exporter of record. Buyer represents that it is not, and to the best of Buyer's knowledge, its customers, its customers' end-users and its agents are not, subject to any U.S. or other government sanction or restriction that would prohibit the sale or export by O&K American of the Products or Services. Upon O&K American's request, Buyer shall provide all end-user and end-use information of which it is aware or which it could obtain with commercially reasonable efforts. Buyer shall comply strictly with all applicable U.S. export laws and regulations, and Buyer shall assist O&K American in complying and documenting compliance with any applicable U.S. export laws, regulations, and executive orders. Regardless of any statements on Buyer's purchase order or other documents to the contrary, O&K American shall not be the importer of record (as that term is defined by U.S. law at 19 USC 1484, or equivalent provision of non-U.S. law) with respect to a transaction governed by this Agreement, unless otherwise agreed in writing by an authorized representative of O&K American.

43. **PROPERTY AND FACILITIES.** Buyer is considered the owner of all specifically identified tooling, dies and similar items that Buyer owns and places in O&K American's possession for the purpose of manufacturing the Products or providing the Services (the "Buyer Tooling"). Buyer is responsible for paying for any necessary replacements of and repairs to the Buyer Tooling. O&K American assumes no obligation or liability with respect to the Buyer Tooling or any other property of Buyer to which O&K American is not taking title, including tangible personal property of Buyer upon which O&K American will be performing Services (the "Buyer Property"). O&K American is not obligated to segregate, label, protect, insure, or take any other action with respect to managing and safeguarding the Buyer Tooling and Buyer Property. Buyer accepts all risk of loss and damage to the Buyer Tooling and Buyer Property. O&K American is considered the owner of all tooling, dies and similar items used by O&K American in connection with the Products and Services other than the Buyer Tooling ("O&K American Tooling"). Buyer acquires no interest in the O&K American Tooling, notwithstanding any charges, amortizations or other costs included in the pricing or otherwise paid by Buyer in relation to the O&K American Tooling. O&K American may use the Buyer Tooling and the O&K American Tooling without restriction in any of its business operations, including in the manufacture of the Products, provision of the Services, and the manufacture of products and provision of services for other customers.
44. **TRACEABILITY.** If the Agreement obligates O&K American to provide traceability on Products or Service Items, O&K American's obligation with respect to the Products or Service Items returned to O&K American (a) is limited by the accuracy and completeness of the information provided by Buyer with respect to the returned Products or Service Items, and (b) will terminate if the return was not authorized in advance by O&K American.