

## **PACIFIC INTER-MOUNTAIN DISTRIBUTION, LLC**

### **TERMS & CONDITIONS OF SALE**

**ACCEPTANCE.** These Terms & Conditions (“Terms”) govern any invoice(s), purchase order(s) (“PO”) or purchase between Pacific Inter-Mountain Distribution, LLC, (“Seller”), a Delaware limited liability company, doing business in the State of Montana and the buyer (“Buyer”). Buyer desires to buy and Seller desires to sell goods (“Goods”) to Buyer. The agreement between the parties shall be the Seller’s invoice, these Terms and any other terms agreed to in writing between the parties (“Agreement”).

**TERM.** The Effective Date for these Terms shall be October 1, 2017. Either party may terminate these Terms at any time upon thirty (30) days prior written notice to the other party.

**SELLER’S INVOICE.** All Goods purchased under these Terms and the prices for such Goods will be set forth in Seller’s invoice or as otherwise set forth by Seller, unless objected to in writing by Buyer. Payment shall be made as agreed to by the parties. Once the Seller’s invoice has been issued, the sale of the Goods are final. Buyer is responsible for all fees and costs, and credit terms associated with the Seller’s invoice. Payment of the Seller’s invoice is Net 30 from the date the Seller’s invoice is sent by the Seller to the Buyer. If payment is not received by the Seller within thirty (30) days from the date the Seller’s invoice was sent to the Buyer, it will be past due and interest shall accrue at 1.5% per month.

**DELIVERY.** Unless otherwise agreed by the parties in writing, the Buyer will arrange and pay for freight and shipment of the Goods to the destination of their choosing. All Goods will be delivered F.O.B. manufacturer’s facility, unless other arrangements are agreed to in writing by the parties. The risk of loss for the Goods, regardless of the cause of the damage, shall be on the Buyer once it leaves the manufacturer’s facility.

**CONSTRUCTION LIENS.** The Buyer affirmatively represents that the Buyer is properly registered and licensed under all applicable federal, state and local laws. The Buyer understands that if they fail to pay the Seller timely, the Seller may be entitled to a lien against the at-issue property. The Buyer waives any notice requirements that they may be entitled to under the applicable lien laws. The Buyer will assist the Seller in obtaining any information needed to give notice, file a lien and foreclose on said lien against the at-issue property. The Buyer will pay the Seller all of their attorney fees and costs to give notice, file a lien and foreclose on said lien against the at-issue property, if the Buyer fails to timely pay the Seller on the money owed.

**DISCLAIMER AND LIMITATION OF EXPRESS WARRANTIES.** There are no express warranties other than those specifically contained in these Terms, and they are not assignable. Any representations as to the performance of the Goods and other matters, except as contained in these Terms, are for illustrative purposes only, and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there will be no third-party beneficiaries contained in these Terms. Seller does not warrant any portion of the Goods not conceived, designed, developed or manufactured by Seller (whether or not specified by Buyer), but Seller must assign to Buyer upon written request all assignable warranties of Seller’s suppliers related to such Goods. Seller is not responsible for any errors or omissions or for any loss or damage resulting from any descriptions, shipping specifications, illustrations, specifications, representations as to quality or capabilities or any other information. Such information provided by Seller is intended for general information only. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures, unless specifically contained in these Terms.

**DISCLAIMER OF IMPLIED WARRANTIES.** SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE), INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, AND

MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING OR COURSE OF PERFORMANCE. There are no warranties that extend beyond those express warranties contained in these Terms. Buyer affirms that it has not relied upon Seller's skill or judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in these Terms. Any recommendation or design provided by Seller is based on information provided by Buyer. Any modifications of recommendation, drawing, prototypes, specifications and other work of Seller, after approval by Buyer, will be at Buyer's sole cost and expense. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in these Terms.

**CONSEQUENTIAL, INCIDENTAL AND OTHER DAMAGES.** BUYER AND THIRD PARTIES ARE NOT ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE UNIFORM COMMERCIAL CODE ("UCC") OR OTHERWISE. This limitation will be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail as to its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages will not affect the right of Seller to indemnification hereunder, and under no circumstances will Buyer recover more than the purchase price. UNDER NO CIRCUMSTANCES WILL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHER SUCH EVENT GIVING RISE TO THE CLAIM.

**INDEMNITY.** Buyer agrees to indemnify and hold Seller harmless against all actions, claims, loss, demands, costs, damages or expense of any kind, including attorneys' fees and costs of defense, which may be brought or made against Seller, or which Seller may pay or incur, by reason of Buyer's negligence and by reason of Buyer's failure to perform in accordance with this Agreement. Provided, however, that if such actions, claims, demands, costs, damages or expenses are caused by or result from the concurrent negligence of Buyer and Seller, then this indemnity provision shall be valid and enforceable only to the extent of Buyer's negligence.

**INSURANCE.** Buyer shall, at its own expense, obtain and maintain throughout the term of these Terms, occurrence-based commercial general liability insurance with minimum limits of one (1) million dollars combined single limit per occurrence, two (2) million dollars general aggregate and two (2) million product/completed operations aggregate, worker's compensation insurance as required by the laws of the state where the Goods shall be used. Such insurance shall be provided by insurance carrier(s) with a financial condition comparable to or better than a Best's "A" rating. Each policy shall name Seller as an additional insured and provide that such policies cannot be canceled without thirty (30) days prior written notice to Seller. Buyer shall provide Seller with a certificate of insurance and an additional insured endorsement at least ten (10) days before the Goods are shipped and thereafter prior to the expiration of any policy. Compliance with this Section concerning insurance shall in no way limit or restrict the Buyer's indemnification obligations.

**UCC.** Whenever a term is defined by the UCC, as adopted by Montana, if used in these Terms, the definition contained in the UCC will control. The rights and liabilities arising out of these Terms, as it applies to these Goods shall be determined under the UCC, as enacted by Montana, so long as it does not contradict or change the language or intent of these Terms.

**CONFIDENTIAL INFORMATION.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each

party will include these Terms as well as business and marketing plans, technology and technical information, product plans and designs and business processes disclosed by such party. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. In the event either party receives a subpoena or other court or government order to disclose any Confidential Information of the other, it shall provide prompt written notice thereof to the other party to allow it to seek any appropriate protective order.

**FORCE MAJEURE.** In the event of delay on the part of the Seller or Buyer in the fulfillment or performance of the Agreement is caused by any law, order, rule, regulation, or act of governmental authority, act of God, fire, flood, rain, earthquake, accident, explosion, war, boycott, lock-out or other labor dispute, or any other cause of the same nature (Force Majeure events), beyond the reasonable control of Seller or Buyer, Seller or Buyer shall not be liable to the other for any such delay or performance caused by the Force Majeure event. In the case of a Force Majeure event, Seller and Buyer shall give notice to the other, explaining the nature and expected duration of the Force Majeure event, and promptly do everything reasonably possible to resume performance under the terms and conditions of this Agreement.

**NOTICES.** All notices shall be made to the parties at their respective addresses as set forth below in these Terms. Either party may change their address for notice by sending written notice to the other party.

**ASSIGNMENT.** No party may assign this Agreement, or any rights or obligations under or relating to this Agreement, whether voluntarily, involuntarily or by operation of law, without the prior written consent of the other party.

**CHOICE OF LAW & VENUE.** Any action for the interpretation or enforcement of this Agreement shall only be brought in a State Court located in Flathead County, Montana, with such court having exclusive jurisdiction. The substantive law of the State of Montana shall govern the determination of such action, notwithstanding any conflicts of laws principles that would otherwise apply.

**ATTORNEYS' FEES.** In the event a suit or action is brought to enforce this Agreement or to construe or interpret this Agreement, the prevailing party shall be entitled to recover the reasonable costs and expenses of the suit or action, at trial or upon appeal, including reasonable attorneys' fees. In the event suit or action is instituted in a Bankruptcy Court to enforce or interpret any of the terms of this Agreement, to seek relief from an automatic stay, to obtain adequate protection, to determine dischargeability of any debts or to otherwise assert the interest of the creditor in a bankruptcy proceeding, the debtor shall pay the reasonable costs and expenses incurred by the creditor, including reasonable attorneys' fees.

**ENTIRE AGREEMENT.** This Agreement constitutes the final and complete agreement. These Terms supersede all prior correspondence, memoranda or agreements, between the parties relating to the subject matter hereof. These Terms cannot be changed or modified, unless agreed to in writing by the parties. In the event of a conflict between these Terms and the Buyer's PO or other terms agreed to in writing by the parties, these Terms will prevail. In no event may the preprinted terms or conditions found on any Buyer's PO, work order, invoice, or statement be considered an amendment or modification to these Terms. Buyer's proposal for additional or different terms or any attempt by Buyer to vary in any degree the Terms stated herein is hereby objected to and rejected. Prior course of dealing or usage of trade will not be used to modify, vary, supplement or explain these Terms.

**CAPTIONS.** The titles, headings and captions used herein are inserted only for convenience and reference, and are not intended to define, limit, describe the scope, intent or language of these Terms or any portion hereof.

**CONSTRUCTION.** Seller acknowledges that each party and its counsel have had an opportunity to review these Terms and any ambiguity will not be construed against either party.

**SUCCESSORS AND ASSIGNS.** These Terms shall be binding on and inure to the benefit of the successors and assigns of the parties.

**SEVERABILITY.** If any provision of these Terms are held invalid or unenforceable, it will not affect the validity or enforceability of all other provisions found herein.

**COUNTERPARTS & SCANNED SIGNATURES.** These Terms may be executed in counterparts; each of which will be deemed an original copy of these Terms and all of which, when taken together, will be deemed to constitute one and the same Terms. Scanned signatures shall have the same force and effect as original signatures.

**WARRANTY OF AUTHORIZED SIGNATORIES.** Each of the signatories hereto warrant and represent that he or she is of legal age, legally competent and authorized to enter into and/or approve these Terms on behalf of the party for whom he or she purports to sign.