

PACKER FASTENER AND SUPPLY, INC. (“PACKER FASTENER”)



Terms and Conditions of Sale

1. **GENERAL** – These Terms and Conditions of Sale (“Terms”) shall apply to and govern all fasteners and all other goods or services purchased (collectively, “Products”) which Packer Fastener sells to you (“Customer”) under the attached Order Acknowledgement (“Agreement”), which, together with these Terms, shall constitute the entire agreement between Packer Fastener and Customer (collectively, “Contract”). The sale of the Products is expressly conditioned upon Customer’s acceptance of these Terms, which acceptance may be express or implied. Customer’s full or partial payment or receipt and acceptance of Packer Fastener’s Products shall constitute acceptance of these Terms. PACKER FASTENER EXPRESSLY OBJECTS TO, AND IS NOT BOUND BY, ANY TERMS OR CONDITIONS ON CUSTOMER’S ORDER, CONFIRMATION FORMS OR OTHER DOCUMENTS, WHICH ATTEMPT TO IMPOSE UPON PACKER FASTENER TERMS AND CONDITIONS WHICH DIFFER FROM PACKER FASTENER’S TERMS SET FORTH HEREIN; AND PACKER FASTENER’S PERFORMANCE OR FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY CUSTOMER COMMUNICATION SHALL NOT BE DEEMED TO WAIVE ANY PROVISION HEREIN, OR CONSTITUTE ASSENT TO ANY SUCH ADDITIONAL, DIFFERENT AND/OR INCONSISTENT TERMS. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry.

2. **PRICE; PAYMENT** – Customer agrees to pay Packer Fastener all amounts specified in the Agreement within ten (10) days of receipt of Packer Fastener’s invoice. All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes (other than taxes on Packer Fastener’s income). All payments by Customer shall be in U.S. Dollars, without prior demand and without deduction or set off. Outstanding balances not paid when due are subject to late charges accruing from the invoice date at the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Packer Fastener’s receipt of any payment less than the full amount due shall not waive any of Packer Fastener’s rights. Packer Fastener may set off any amount due from Customer, whether or not under this Contract, against any amount due Customer hereunder. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Packer Fastener, whether relating to Packer Fastener’s breach, bankruptcy, or otherwise. All costs and expenses, including but not limited to collection fees and reasonable legal fees for the collection of any overdue amount due Packer Fastener, shall be paid by Customer. All discounts and new customer referral credits available to Customer, if any, are subject to: (i) Packer Fastener’s prior written approval; and (ii) such terms and conditions as may be acceptable to Packer Fastener, in its sole discretion.

3. **DELIVERY** – The Products will be delivered within a reasonable time after acceptance of the order, quote, or proposal, subject to availability. The Products will be delivered within a reasonable time after receipt of Customer’s purchase order, subject to availability. Packer Fastener shall not be liable for any delays, loss, or damage in transit. Packer Fastener shall not be liable for any non-delivery of Products (even if caused by Packer Fastener’s negligence) unless Customer gives written notice to Packer Fastener of the non-delivery within five (5) days of the date when the Products would in the ordinary course of events have been received. The Products shall be delivered to the location identified in Customer’s purchase order (“Delivery Point”), using Packer Fastener’s standard methods for packaging and shipping, unless otherwise specified in Customer’s purchase order and agreed to by Packer Fastener. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point. Packer Fastener may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer’s purchase order. If for any reason Customer fails to accept delivery of any of the Products when delivered to the Delivery Point, or if Packer Fastener is unable to deliver the Products at the Delivery Point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Customer; (ii) the Products shall be deemed to have been delivered; and (iii) Packer Fastener, at its option, may store the Products until Customer, whereupon, Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. **INSPECTION AND REJECTION OF NONCONFORMING GOODS** – Customer shall inspect the Products within five (5) days of receipt (“Inspection Period”). Customer will be deemed to have accepted the Packer Fastener Products unless it notifies Packer Fastener in writing of any Nonconforming Goods (as defined below) during the Inspection Period and furnishes such written evidence or other documentation reasonably required by Packer Fastener. “Nonconforming Goods” means only the following: (i) the product shipped is different than identified in the Agreement; or (ii) the product’s label or packaging incorrectly identifies its contents. If Customer timely notifies Packer Fastener of any Nonconforming Goods, Packer Fastener shall, in its sole discretion and its sole option: (A) replace the Nonconforming Goods with a conforming Packer Fastener Product; or (B) credit or refund the price of such Products, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer acknowledges that the remedies set forth in this Section are Customer’s exclusive remedies for the delivery of Nonconforming Goods.

5. **LOSS AND DAMAGE** – Upon delivery, Customer shall bear the entire risk of loss, theft, damage or destruction of the Products from any cause whatsoever, and no loss, theft, damage or destruction of the Products shall relieve Customer of any obligation hereunder. Customer shall at all times comply with all applicable laws, ordinances, and regulations in any manner relating to the possession or use of the Products.

6. **TITLE** – Title to the Products shall transfer to Customer upon payment in full of all amounts owed Packer Fastener hereunder. Prior to such payment, Customer shall keep the Products free and clear of all liens and encumbrances arising through Customer and shall not

pledge or encumber the Products in any way. As collateral security for the payment of the purchase price of the Products, Customer hereby grants to Packer Fastener a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

7. **INSURANCE** – During the term of this Contract, Customer shall, at its own expense, maintain and carry insurance in full force and effect, which includes, but is not limited to, (i) commercial general liability insurance written on an occurrence form, including blanket contractual liability coverage, foreign general liability coverage, and products liability including a “terrorism” rider, against claims for bodily injury, death and property damage, affording minimum single limit protection of One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate, with respect to personal injury or death and property damage; (ii) automobile liability insurance against claims for bodily injury, death and property damage, affording minimum single limit protection of One Million Dollars (\$1,000,000.00) with respect to personal injury or death and property damage occurring from one occurrence; (iii) worker’s compensation insurance in accordance with statutory requirements and employer’s liability insurance against claims for bodily injury and death, affording minimum single limit protection of One Million Dollars (\$1,000,000.00) resulting from one occurrence; (iv) products accidental contamination and malicious tampering insurance (Product Recall), providing coverage for the expenses incurred in removing contaminated product from the market, and for the expenses incurred in transporting, storing, disposing of, and replacing said product, for the resulting loss of revenue that may incur, and finally for the costs incurred in rehabilitating the brand, with a minimum insurance of Five Million Dollars (\$5,000,000), which shall remain in effect for one (1) year after termination of this Contract; and (v) excess or umbrella liability insurance with limits of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury or property damage in excess of the limits afforded for general liability and employer’s liability provided above. Customer’s insurance shall name Packer Fastener as an additional insured under subsections (i) and (ii), above. Customer shall purchase all such insurance from a reputable, duly qualified insurance company(ies), with at least an A.M. Best Rating of A-, FCS VIII.

8. **LIMITED WARRANTY** – Packer Fastener represents and warrants to Customer that the Products will materially conform to its specifications then in effect. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Packer Fastener shall not be liable for a breach of this limited warranty unless: (i) Customer gives written notice of the defect, reasonably described, within seven (7) days of the time when Customer discovers or ought to have discovered the defect; (ii) Packer Fastener is given a reasonable opportunity after receiving the notice to examine the Packer Fastener Product and Customer (if requested to do so by Packer Fastener) returns such Packer Fastener Product to Packer Fastener’s place of business, at Packer Fastener’s cost; and (iii) Packer Fastener reasonably verifies Customer’s claim that the Packer Fastener Product is defective. Packer Fastener shall not be liable for a breach of this limited warranty if the defect arises because Customer failed to follow Packer Fastener’s instructions as to the possession or use of the Products, or because Customer otherwise breached the Contract (including without limitation by altering or modifying the Products without Packer Fastener’s prior written consent). Packer Fastener shall further not be liable for a breach of this limited warranty if Customer attempts to reverse engineer the Products. Subject to the terms and conditions of this Section, Packer Fastener’s sole obligation for the Products, which does not comply with this limited warranty shall be, at Packer Fastener’s sole discretion, to credit or refund the price of such Products provided that, if Packer Fastener so requests, Customer shall, at Packer Fastener’s expense, return such Products to Packer Fastener. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO WARRANTIES PURSUANT TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. PACKER FASTENER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL LAW, INCLUDING WITHOUT LIMITATION THE NORTH AMERICAN FREE TRADE AGREEMENT (“NAFTA”), FEDERAL FOOD, DRUG, AND COSMETIC ACT (“FFDCA”), THE CONSUMER PRODUCT SAFETY ACT, THE HAZARDOUS SUBSTANCES LABELING ACT, AS ANY OF THE FOREGOING MAY BE AMENDED FROM TIME TO TIME, TO THE EXTENT APPLICABLE TO THE MANUFACTURE OR SUPPLY OF THE PRODUCTS TO CUSTOMER.

9. **LIMITATION OF LIABILITY** – IN NO EVENT SHALL PACKER FASTENER BE LIABLE TO CUSTOMER OR ANYONE CLAIMING THROUGH OR UNDER CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, INCLUDING, WITHOUT LIMITATION, DELAY, LOST REVENUE, LOST PROFITS OR LOSS OF GOODWILL, EVEN IF PACKER FASTENER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer’s aggregate recover from Packer Fastener for any claim other than those excluded herein shall not exceed the fees paid by Customer for the Products giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise. IF FOR ANY REASON, THE FOREGOING LIMITATION ARE FOUND BY A COURT OR

ARBITRATION PANEL TO BE INVALID OR INAPPLICABLE UNDER ANY APPLICABLE STATE OR FEDERAL LAW. CUSTOMER AGREES THAT PACKER FASTENER'S TOTAL LIABILITY FOR ALL LOSSES (AS DEFINED BELOW) OF ANY KIND OR NATURE SHALL BE LIMITED TO ACTUAL DAMAGES WITHOUT REGARD TO ANY PUNITIVE OR EXEMPLARY DAMAGES PROVIDED BY ANY APPLICABLE LAW.

10. **INDEMNIFICATION** - To the maximum extent allowed by law, Customer shall defend and indemnify Packer Fastener and its officers, directors, employees, agents, representatives, successors and assigns from and against any claim, loss, liability, damage, deficiency, suit, action, demand, judgment, penalty, fine, cost or expense (including, but not limited to, legal fees) that Packer Fastener may incur or be obligated to pay as a result of: (i) Customer's negligence or intentional misconduct; and/or (ii) Customer's breach of any term, covenant, representation or warranty contained in this Contract. Packer Fastener's remedies under these Terms are cumulative and in addition to any other remedies available at law, in equity, by contract or otherwise. No purported limitation on Packer Fastener's remedies contained in any other Customer form or document shall operate to reduce this indemnification obligation. If any claim is asserted or action commenced against Packer Fastener for which Packer Fastener is entitled to indemnification hereunder, Customer shall, upon Packer Fastener's demand, promptly undertake the defense thereof, employing counsel satisfactory to Packer Fastener (or Packer Fastener may elect to defend the same on its own behalf). In either case, Customer will, upon demand, pay all reasonable legal fees and other costs or expenses incurred by Packer Fastener in connection with such defense, including, but not limited to, any judgment or award resulting from any such claim or action and any settlement paid by Packer Fastener with Customer's consent.

11. **DEFAULT** - Each of the following shall constitute a "Default" hereunder: (i) failure by Customer to pay any amounts under the Contract when the same is due and payable; (ii) failure by Customer to perform any other provision hereunder within ten (10) days after written notice thereof from Packer Fastener; and (iii) the adjudication of Customer as bankrupt, the insolvency of Customer, an assignment by Customer for the benefit of creditors or the appointment of a receiver for any of Customer's property. Upon Default, Packer Fastener shall have the right to exercise any one or more of the following remedies, in addition to all other rights and remedies available to Packer Fastener at law or in equity: (A) sue for and recover all amounts then due or thereafter accruing hereunder; and (B) terminate the Contract. Customer shall pay all costs and expenses (including reasonable legal fees) incurred by Packer Fastener in exercising its rights or remedies hereunder or enforcing any of the provisions hereof. Any provision that, in order to give proper effect to its intent, should survive expiration or earlier termination, shall survive expiration or earlier termination.

12. **CONFIDENTIAL INFORMATION** - All non-public, confidential, or proprietary information of Packer Fastener (including without limitation any information relating to its products, recipes, formulae, specifications, technology, designs, processes, machinery, equipment, plans, policies, procedures, employees, legal and regulatory affairs, assets, discoveries, know-how, trademarks, patents, copyrights, trade secrets, prices, marketing, expenses, business plans, financial statements and data, customer and supplier lists, and relationships with third parties, other information, materials, documents, and data related to any of the foregoing, in each case whether or not patentable or susceptible to any other form of legal protection) disclosed to Customer, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential", is confidential, solely for the use of performing this Contract, and may not be disclosed or copied unless authorized by Packer Fastener. Packer Fastener shall be entitled to seek injunctive relief for any violation of this Section. Customer's obligations pursuant to this Section shall not apply to information that Customer demonstrates is: (i) is publicly available or becomes publicly available through no action or fault of Customer; (ii) was already known to Customer prior to being disclosed or provided by Packer Fastener, provided that the source of such information was not obligated by an existing duty of confidentiality with respect to such information; or (iii) was or is legally obtained by Customer from a source that is not obligated by an existing duty of confidentiality with respect to such information. Customer's obligations set forth in this Section shall survive the expiration or earlier termination of the Contract.

13. **FORCE MAJEURE** - Packer Fastener shall not be liable to Customer or third parties, nor be deemed to have defaulted under or breached the Contract, for delay in, or failure of, performance caused by acts or circumstances beyond its direct control, including but not limited to acts of God, fire, flood, pandemics and epidemics; explosion, war, invasion, hostilities; governmental order, law, or action; terrorist threats or acts, riot or other civil unrest; embargoes or blockades in effect on or after the date of this Contract; national or regional emergency; accident, labor disputes, strikes, non-performance by a third party; shortage or inability to obtain materials, equipment, power or transportation. If delay is caused by any such circumstances, Packer Fastener shall have the option to terminate this Contract and/or extend any date upon which performance hereunder is due, without liability to Customer.

14. **NOTICES** - All notices shall be in writing and shall be deemed sufficiently given and received in all respects when hand delivered, when sent by facsimile or email, when sent by a reputable overnight courier service, or three (3) days after being deposited in the United States mail, return receipt requested, addressed to Packer Fastener or Customer, as the case may be, at the address set forth in the Contract (or to such other address as may be designated in a writing by notice duly given or, in the case of Packer Fastener, to 728 Lombardi Avenue, Green Bay, Wisconsin 54304).

15. **ASSIGNMENT** - Customer may not assign any of its rights, duties, or obligations under the Contract without Packer Fastener's prior written consent. Any attempted assignment without such consent, even if by operation of law, shall be void.

16. **RELATIONSHIP OF THE PARTIES; NO THIRD-PARTY BENEFICIARIES** - Nothing contained in this Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer

upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

17. **GOVERNING LAW; VENUE** - All transactions between Packer Fastener and Customer shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of law principles. Any action or proceeding involving any dispute relating to or arising from the Contract shall be commenced exclusively in the federal or state courts located within Wisconsin, and Customer consents to the exclusive jurisdiction of such courts and waives any objection to such jurisdiction.

18. **WAIVER; SEVERABILITY** - The failure of Packer Fastener, at any time, to assert any right or require performance of any obligation contained in this Contract will not affect Packer Fastener's right to assert such right or to require such performance at any time thereafter; nor shall the waiver be construed in any way as a waiver of any future breach of the provision so waived or waiver of the provision itself. The Contract confers no rights on third parties. In the event that any provision of this Contract is found invalid or unenforceable, whether in whole or in part, for any reason, such provision shall be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law.

19. **AMENDMENT** - The Contract may only be amended by a written agreement executed by Packer Fastener and Customer.