

## TERMS AND CONDITIONS OF SALE (July 1, 2017)

The terms hereinafter set forth shall be deemed incorporated in the foregoing proposal ("Proposal").

References herein to the term "MSI" shall mean the Seller, Marchant Schmidt, Inc., a Wisconsin corporation. References to "Purchaser" shall mean the customer or potential customer to whom the Proposal is directed or any other party acting upon the foregoing Proposal.

### PRICES

- a. FOB point of origin
- b. Subject to change without notice at any time prior to acceptance of Proposal, as evidenced by Purchaser's formal written acknowledgment.
- c. Price does not include sales tax, use or excise tax, or similar taxes, which shall be the responsibility of, and paid by, the Purchaser unless the Purchaser shall provide MSI with a tax-exemption certificate acceptance to the taxing authorities. Also excludes VAT taxes or any other taxes or duties.
- d. Subject to change caused by modifications of specifications or terms mutually agreed upon after Proposal's acceptance.
- e. Subject to adjustments caused by changes in surcharges placed on items such as stainless steel, fuel, etc.
- f. Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).
- g. Furthermore, the INCOTERMS shall apply in the version valid on the date when a contract is signed.

### SHIPPING SCHEDULE

- a. Any completion date specified is subject to change caused by modification of specifications or terms mutually agreed upon after acceptance.
- b. MSI shall have no liability for loss or damage resulting from a delay in scheduled delivery caused by war, riots, strikes, labor disputes, fires, accidents, delays in receipt of parts or materials from suppliers or subcontractors, design or engineering problems, natural disasters, weather or any other circumstances beyond MSI's control.
- c. Under no circumstances shall MSI have any liability whatsoever for loss of use or for any other indirect or consequential damages, similar or dissimilar, due to delay in scheduled delivery.

### WARRANTY/LIMITED WARRANTY

The Purchaser of goods from MSI shall be entitled to the following limited warranty:

- a. Except as noted in subparagraph (h), below, any goods (products or parts) sold by MSI or supplied by MSI to Purchaser which, under normal operating conditions, proves defective in material or workmanship within one (1) year from the date of shipment will be repaired or replaced at MSI's option, excluding freight and installation, provided that Purchaser shall promptly send to MSI notice of the defect and establish that the goods have been properly installed, maintained and operated. At the option of MSI and in lieu of repairing or replacing the goods, MSI may refund the purchase price paid and receive back the goods which were furnished to the Purchaser.
- b. The terms of this warranty do not in any way extend to any product, or part thereof, which is sold by MSI to Purchaser and which has a life under normal usage, inherently shorter than one (1) year.
- c. THIS WARRANTY IS A LIMITED WARRANTY AND IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.
- d. In no event shall MSI (or its suppliers) be liable for any loss of use or "down-time" or for any special, consequential, incidental, or indirect damages with respect to goods furnished by MSI or anything done in connection herewith. This limitation of damages applies to, but is not limited to, such things as loss of product, loss of profit, labor, or other expenses. This limitation of MSI liability applies whether any claim against MSI is based upon contract, tort option, replacement of the goods, or a refund of the purchase price upon return of the non-conforming goods to MSI.
- e. The warranty is limited to the first purchaser and is not transferable.
- f. Any action to enforce the provisions of this warranty shall be commenced within one (1) year of the accrual of the cause of action.
- g. If Purchaser, without the written consent of MSI, makes any changes to the structure or configuration of the product or goods furnished by the MSI, then"
  - i. All warranties of MSI shall become void and of no effect, and
  - ii. Purchaser shall thereby assume any and all liability for property damage, personal injury, death or other consequence arising out of operation and use of the modified part of MSI's goods and Purchaser agrees to indemnify and hold MSI harmless from and against all such liability and expenses, including reasonable attorney's fees with respect thereto.

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- h. Provided, however, in the event goods are furnished by third parties and not manufactured by MSI, then the warranty provided hereunder will be the lesser of the warranty provided by such third party or the MSI warranty stated above. The foregoing Limited Warranty shall not be modified, amended, or replaced in any manner by virtue of any subsequent communication or correspondence between the parties, including the acknowledgment by the Purchaser.

### RETURNED MERCHANDISE

- a. In no case are goods to be returned without first obtaining written permission from MSI in the form of a return authorization number.
- b. Purchaser returning merchandise must pay transportation charges and bear risks of loss or damage to goods while in transit to and from MSI.

### PRODUCTION ESTIMATES AND PERFORMANCE

All working drawings or other materials provided by MSI are for general information purposes only. Any specifications contained therein are not binding on MSI except as expressly so stated in this Proposal or otherwise in writing. The goods shall be deemed accepted by Purchaser if the Purchaser continues to use the goods or if the Purchaser has not given written notice to MSI within ten (10) days of delivery of the goods to the Purchaser stating with particularity any reasons for non-acceptance. MSI reserves the right to make, at any time, such changes in detail of design or construction as shall, in the judgment of MSI, constitute an improvement to the goods.

### CANCELLATION

- a. Following acceptance by Purchaser, this Proposal may not be cancelled without the written consent of MSI.
- b. In the event of a request to stop work or to cancel the whole or any part of the proposal, the purchaser shall make payment to MSI for the following:
  - i. Costs incurred by MSI in connection with this proposal up to the date of cancellation. In such event, less the sum of payments made to MSI, the purchaser shall pay an amount equal to the sum of all direct material costs (including restocking charges), all direct labor, all engineering expenses, any special tooling, and all associated costs, plus 30%; or 40% of purchase price of the proposal, whichever is greater.
  - ii. Any work scheduled for completion within 60 days of notice of purchaser's cancellation will be paid in full and the purchaser will accept shipment.

### PAYMENT TERMS

Unless otherwise agreed to in writing, Purchaser shall pay for the purchase price for the goods as follows:

- a. Forty percent (40%) at the time the order is placed.
- b. Twenty-five percent (25%) after approved drawings have been acknowledged by Purchaser.
- c. Twenty-five percent (25%) upon notification goods are ready to ship.
- d. Ten percent (10%) net thirty (30) days following shipment.

Any payments not made within five (5) days thereafter shall be subject to a late fee or service charge equal to twelve percent (12%) per annum. In the event it is necessary for MSI to retain an attorney to collect balances due hereunder, then all costs associated therewith, including a reasonable attorney's fee, shall be paid by Purchaser.

MSI's preferred payment methods are wire transfer or check. MSI may accept payment by credit cards. However, except where prohibited by law, for purchases paid using a credit card, you agree to pay a non-refundable convenience fee of 3% (or the maximum amount allowed by applicable law) of the total purchase amount. The convenience fee for credit card payments shall be added to the total balance of an invoice before MSI processes the credit card payment. In states where credit card payment surcharges are prohibited or restricted, MSI may refuse to accept payment of credit card for purchases in excess of \$1,500.

### ACCEPTANCE OF PROPOSAL

The acknowledgment and acceptance of this Proposal must clearly state name and address of the Purchaser, shipping instructions, and all conditions, mechanical and otherwise, with which MSI is expected to comply. The Purchaser shall furnish a written "acknowledgment" which shall constitute the Purchaser's acceptance of this Proposal. Any subsequent acknowledgment or Counter-Proposal shall be conclusively deemed to include the Terms and Conditions of Sale contained in this Proposal unless this provision is waived in writing by MSI.

## **TERMS AND CONDITIONS OF SALE (July 1, 2017)**

### **SECURITY AGREEMENT**

Purchaser hereby grants to MSI a security interest under the provisions of the Uniform Commercial Code in all goods, which are sold hereunder to secure all balances and obligations now or hereafter due by Purchaser to MSI of any nature.

At the request of MSI, Purchaser agrees to execute a UCC Financing Statement or other documents necessary for perfection of this security interest. Purchaser constitutes MSI as its agent and power of attorney for the purpose of executing financing statements or other documentation to evidence perfection of the security interest herein granted.

### **TITLE**

Delivery of goods to the carrier by MSI consigned to Purchaser, or as Purchaser shall direct, shall constitute transfer of title (subject to reservation of security interest) and ownership. Such carrier shall be deemed to be acting for the Purchaser and the risk of loss to the goods thereafter shall be the Purchaser's.

### **USE/OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

- a. Purchaser's or user's responsibility to provide all proper means that may be necessary to effectively protect all persons from serious bodily injury which otherwise may result from the use, operation, set-up, or service of MSI goods supplied hereunder. Purchaser will comply with all procedures or rules of OSHA or other governing authorities, including those requirements with respect to guarding of machinery and lock out and tag out procedures.
- b. Purchaser or other user must advise MSI, if modification to the goods is required for compliance.
- c. Goods designed and manufactured by MSI are capable of being used in a safe manner, but MSI cannot guarantee their safety under all circumstances.
  - i. PURCHASER MUST INSTALL AND USE THE GOODS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH AND SAFETY REGULATIONS AND LAWS AND TO A GENERAL STANDARD OF REASONABLE CARE.

### **ERRORS**

This proposal and other quotations are subject to revision in case of clerical error, whether in favor of the Purchaser or MSI, upon notice by either party.

### **HOLD HARMLESS/INDEMNITY**

Purchaser shall hold MSI harmless from any and all liability, costs, damages, attorney's fees, and expenses resulting from claims or causes of action of any nature arising out of the sale or use of the goods manufactured or supplied by MSI except to the extent such claims or liability results from the fault, or alleged fault, of MSI.

### **APPLICABLE LAW**

These Terms and Conditions and the contractual arrangement between the parties shall be interpreted and governed by the internal laws of the State of Wisconsin.

### **GENERAL**

Acceptance of this Proposal must be without qualification. No terms or conditions other than those stated herein, and no agreement or understanding, oral or written, purporting to modify these terms or conditions, whether contained in Purchaser's acknowledgment, shipping release forms or elsewhere, shall be binding upon MSI unless such modifications are hereafter made in writing and signed by an authorized representative of MSI. There are no agreements between MSI and Purchaser with respect to the goods quoted herein except as set forth herein or as otherwise set forth in writing and expressly made a part of this quotation.

All amendments and/or modifications shall be deemed to include each and every of the provisions herein set forth.

The term "goods" as used herein shall mean goods as defined under the Uniform Commercial Code and shall also be deemed to include engineering, labor, or other services or intangibles which may be part of the Proposal.

The party accepting this Proposal warrants that he/she has the authority to do so on behalf of the Purchaser.

## **TERMS AND CONDITIONS OF SALE (July 1, 2017)**

### **CONFIDENTIALITY**

Both MSI and the Purchaser agree to respect the confidential information of the other party. "Confidential Information" shall mean all technology, data, inventions, information, drawings, records, processes, know-how, patent applications, trade secrets, or other proprietary information which is disclosed by one party to another. Provided, however, Confidential information does not include information which (1) can be demonstrated to have been known to the receiving party or its affiliates or advisors prior to the date of this Proposal, or after the date of this Proposal but prior to the time of disclosure, (b) becomes generally available to the public other than as a result of a breach of this Proposal, (c) is furnished to a receiving party by a third party who is lawfully in possession of such information and who lawfully conveys such information, (d) is required to be disclosed by any law, judicial order or rule, or by any order, rule or regulation of any governmental agency or other governmental body, or (e) is subsequently developed by the receiving party independently of the information received from the disclosing party.

### **NONLIABILITY FOR GOODS BEING STORED BY MSI**

In the event the Purchaser has requested that MSI store or retain the goods for a period of time following their availability for delivery, such storage shall be at the risk and expense of the Purchaser.

### **INSTALLATION**

Unless agreed in writing otherwise, installation is not included. Time required for installation and/or training will be at an extra cost to Purchaser.

### **TEST MATERIALS**

In the event test materials are necessary in order to verify operation of goods. Purchaser shall furnish, at Purchaser's expense, such product as is necessary for full testing of goods in the opinion of MSI, with these to be furnished at the point of manufacture.

### **COMPLIANCE WITH LAW AND LOCAL ACTION**

If national or local laws, ordinances, regulations, or special or unusual climate conditions were not conveyed to MSI, it will be the responsibility of the Purchaser to supply such additional specifications and pay for any modifications which are required in accord with MSI's normal pricing policies. These charges will be added to the purchase price. If any such modification alter the performance or prevent the goods from performing in a manner which otherwise would have been reasonably anticipated by MSI, MSI shall not be liable therefore and shall not be required to take any action to meet the revised performance specifications.

## TERMS AND CONDITIONS: SOFTWARE LICENSE (July 1, 2017)

THIS LICENSE AGREEMENT (the "License Agreement") is made, by and between Marchant Schmidt, Inc. ("MSI") and the undersigned Customer (the "Customer").

### RECITALS

- a. Customer has purchased certain food processing equipment and machines from MSI, the purchase of which is subject to the Terms and Conditions of Sale.
- b. Customer desires to obtain a license to use certain software installed on or utilized in connection with the control of such equipment and MSI agrees to grant such license to Customer in accordance with the terms and conditions of this License Agreement.

### AGREEMENT

#### 1. Definitions.

- a. "Affiliate" shall mean a business entity that controls (i.e., parent), is controlled by (i.e., subsidiary), or under common control with (i.e., sister company) a party to this License Agreement.
- b. "Base Code" shall mean the PC/PLC, HMI and Vision software programs. The term Base Code includes any corrections, bug fixes, enhancements, updates or other modifications made by MSI, including custom modifications to the Base Code made by MSI.
- c. "Documentation" shall mean user, operational, installation and training manuals provided by MSI related to the use and operation of the Software and/or Equipment, as may be revised by MSI.
- d. "Equipment" shall mean the equipment manufactured by MSI on which the Software is installed and operated, or which is controlled by a PC/PLC on which the Software is installed.
- e. "Modified Code" shall mean modified versions of the Base Code made by Customer in accordance with the terms of this License Agreement, including any custom configuration, custom algorithms, corrections, bug fixes, enhancements, updates or other modifications made by Customer.
- f. "Software" shall refer to the Base Code and Modified Code collectively.

2. Grant of License. MSI grants to Customer, pursuant to the terms and conditions of this License Agreement: (a) a royalty-free, perpetual, nonexclusive, non-transferable, non-sublicensable limited license to install or have installed the Software on the Equipment or on the PC/PLC which controls the Equipment and use the Software in connection with the operation of the Equipment solely in connection with Customer's internal business operations in accordance with the terms and conditions of this License Agreement; and (b) the right to modify, customize and configure the Software in accordance with the Documentation for the purpose of customizing the performance and operation of the Equipment and developing Modified Code.

#### 3. Customer's Use of Software.

- a. Restrictions on Use. Customer shall not (i) sell, transfer, assign, license or sublicense the Software to any third party, except that Customer may transfer the Software to a third party as part of the sale of the Equipment on which the Software is installed; (ii) disassemble, decompile, decode or reverse engineer the Software except as expressly permitted by applicable law or authorized in writing by MSI. If Customer sells the Software as part of the sale of Equipment, Customer shall not retain any copies of the Software apart from the Equipment. This License Agreement shall be binding upon and inure to the benefit of the respective assigns and successors of the parties hereto.



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performs as warranted at no additional charge to Customer. The foregoing constitutes Customer's sole and exclusive remedy and MSI's sole and exclusive liability for breach of the warranty set forth in this Section.

- b. EQUIPMENT WARRANTY DISCLAIMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT MSI SHALL NOT BE LIABLE FOR ANY DEFECT, FAILURE, DAMAGE CAUSED TO EQUIPMENT OR PRODUCTS PROCESSED USING EQUIPMENT; OR THE OPERATION, MECHANICAL DESIGN, FUNCTIONALITY AND INTEGRITY OF ANY EQUIPMENT, CAUSED BY CUSTOMER'S MODIFICATION AND USE OF BASE CODE AND/OR MODIFIED CODE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS SECTION 1(B) SHALL SUPERSEDE AND VOID ANY EXPRESS OR IMPLIED WARRANTY CONTAINED IN MSI'S TERMS AND CONDITIONS OF SALE TO THE EXTENT EQUIPMENT IS AFFECTED BY CUSTOMER'S MODIFICATION AND USE OF BASE CODE AND/OR MODIFIED CODE.
  - c. DISCLAIMER OF WARRANTY. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT CUSTOMER'S USE AND MODIFICATION OF THE BASE CODE IS AT CUSTOMER'S SOLE RISK. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, THE BASE CODE AND MODIFIED CODE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. MSI EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO THE SOFTWARE OR ANY COMPONENT THEREOF, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. MSI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE OR MACHINE WILL BE CORRECT OR ERROR-FREE.
  - d. CUSTOMER'S USE OF THE SOFTWARE IN TERMS OF ITS ACCURACY, RELIABILITY, PERFORMANCE OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MSI OR ITS RESPECTIVE AUTHORIZED REPRESENTATIVE SHALL CREATE AN IMPLIED OR EXPRESS WARRANTY.
  - e. General MSI Warranties. MSI represents and warrants that: (i) it has the right and authority to enter into this License Agreement; (ii) at the time of execution of this License Agreement MSI is not aware of any claim, litigation or proceeding pending or threatened that would interfere with or restrict Customer's rights granted in this License Agreement; (iii) MSI has not received notice that Base Code or Customer's use and/or modification of the Base Code in accordance with this License Agreement infringes or violates any U.S. patent, copyright, trademark, trade secret or other proprietary rights of any third party; and (iv) at the time of installation of the Base Code on the Equipment, the Base Code does not contain any viruses or other contaminants that may corrupt or destroy any data it processes or disable any of its components.
  - f. Limitation of Liability. MSI, AND ITS DESIGNATED RESELLER(S), AGENTS, REPRESENTATIVES, INDEPENDENT CONTRACTORS AND EMPLOYEES, SHALL IN NO EVENT BE LIABLE TO ANY PERSON OR ENTITY UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST BUSINESS REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS OR OTHER ECONOMIC LOSS OF ANY KIND), WHETHER DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL, AND WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN.
8. Indemnification.
- a. Indemnification by MSI. MSI shall indemnify and hold Customer harmless against liability to third parties (only for liability solely the fault of MSI) to the extent arising from the violation of any third party's copyright rights in connection with the use by Customer of the Software (i) as delivered by MSI to Customer herein and (ii) in accordance with this License Agreement. MSI shall have the right to conduct any defense

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and/or settlement in any such third party action arising as described herein. Customer shall fully cooperate with such defense. In no event shall Customer settle any such claim, lawsuit, or proceeding without MSI's prior approval, and MSI shall have no liability for any such unapproved settlement so made. This indemnification is limited to the Software delivered to Customer or as modified by MSI and does not cover third party claims related to Modified Code or the use of the Software in a manner not authorized by MSI or described in the Documentation.

- b. If a third party claim substantially interferes with Customer's use of the Base Code or if MSI believes that a third party claim may substantially interfere with Customer's use of the Base Code, MSI, at its sole discretion, may: (i) replace the Base Code, without additional charge, with a functionally equivalent and non-infringing product; (ii) modify the Base Code to avoid the infringement; (iii) obtain a license for the Customer to continue use of the Base Code and pay any additional fee required for such license; or (iv) if none of the foregoing alternatives are commercially reasonable, MSI may terminate the license for the infringing Base Code. In such event Customer shall de-install the infringing Base Code. This Section 11 shall constitute MSI's entire liability and Customer's exclusive remedy for a third party claim of infringement.
- c. Indemnification by Customer. Customer, on behalf of itself and its agents, will indemnify and hold harmless any award of costs and damages brought against MSI to the extent that it is (i) based on a claim regarding the improper use, installation or configuration of Software by Customer or its Affiliates; or (ii) based on a claim regarding modification, translation, customization or localization to the Software by License or its Affiliates. Customer shall have the right to control the defense of all such claims, lawsuits, and other proceedings. In no event shall MSI settle any such claim, lawsuit, or proceeding without Customer's prior approval, and Customer shall have no liability for any such unapproved settlement so made.
- d. Survival. The terms of this Section 9 shall survive termination of this License Agreement.

9. Confidential Information. Customer acknowledges and agrees that the Software contains proprietary information, including trade secrets, know-how and confidential information that is the exclusive property of MSI. Customer and its employees and agents shall maintain the confidentiality of this information and not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information except as authorized by this License Agreement. Customer shall not disclose any such proprietary information concerning the Software, including any flow charts, logic diagrams, user manuals and screens, to persons not an employee of Customer without the prior written consent of MSI, which consent may be withheld or granted in the sole and absolute discretion of MSI. Customer agrees to take all necessary action to protect the confidential and proprietary information included in the Software, including appropriate instruction and agreement with its employees. This section shall survive termination of this License Agreement.

10. Miscellaneous.

- a. Conflict Provisions. In the event of a conflict in the provisions of this License Agreement and any other terms or conditions of any other agreement to which it is a part of, the provisions of the Terms and Conditions shall govern. If the scope of any of the provisions of this License Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this License Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform the law.
- b. Entire Agreement. This License Agreement and the Terms and Conditions of Sale contain the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters oral or written, purportedly agreed to or represented by or on behalf of MSI by any of its employees or agents, or contained in any sales materials or brochures, shall be

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deemed to bind the parties hereto with respect to the subject matter hereof. Customer acknowledges that it is entering into this License Agreement solely on the basis of the representations contained herein.

- c. Applicable Law and Exclusive Jurisdiction. This Agreement shall be governed by the laws of the State of Wisconsin and the Federal laws of the United States of America, including without limitation the Uniform Commercial Code as adopted in Wisconsin, without any reference to any rule or provision thereof which would cause the application of the law of any other jurisdiction. Any dispute arising out of this License Agreement shall be adjudicated in a court located in Milwaukee County, Wisconsin.