

## TERMS AND CONDITIONS OF SALE (March 27, 2017)

### 1. CONTROLLING PROVISIONS

- a. **Generally:** This Contract constitutes an offer by Marchant Schmidt, Inc. and/or its affiliates ("MSI") to provide the products and/or services described herein (the "Products") to the purchaser to which this offer is addressed ("Purchaser"). The "Contract" includes these Terms and Conditions of Sale and the provisions in MSI's proposal, quotation or acknowledgment or MSI's similar form, and the provisions of any Software License Agreement between MSI and Purchaser to which MSI's Terms and Conditions of Sale apply. If this document is deemed an acceptance of a prior offer by Purchaser, such acceptance is limited to the express terms contained in this Contract. Purchaser's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. MSI hereby objects to and rejects any additional, different or varying terms proposed by Purchaser, unless an authorized officer of MSI expressly assents to such terms in a signed writing. Such proposal of additional, different or varying terms by Purchaser shall not operate as a rejection of MSI's offer, and MSI's offer shall be deemed accepted without such additional, different or varying terms. MSI's sales representatives are without authority to modify this Contract. **THIS CONTRACT CONSTITUTES THE FINAL EXPRESSION OF THE AGREEMENT BETWEEN MSI AND PURCHASER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THAT AGREEMENT. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY PURCHASER AND AN AUTHORIZED OFFICER OF MSI.**
- b. **Acceptance:** Purchaser shall be deemed to have made an unqualified acceptance of this offer and the Contract on the earliest of the following to occur: (i) MSI's receipt of a copy of this Contract (or any agreement into which these Terms and Conditions of Sale are incorporated) signed by Purchaser; (ii) Purchaser's payment of any amounts due under this Contract; (iii) Purchaser's delivery to MSI of any material to be furnished by Purchaser; (iv) Purchaser's acceptance of MSI's delivery of Products; (v) Purchaser's failure to notify MSI to the contrary within ten days of receipt of this Contract, or (vi) any other event constituting acceptance under applicable law.

### 2. PRICES

- a. **Prices:** Prices are stated in U.S. dollars, EX WORKS point of origin. Unless prices are stated in MSI's proposal, quotation or acknowledgment or MSI's similar form or otherwise agreed by an authorized officer of MSI in a signed writing, prices shall be the higher of MSI's most recent quote to Purchaser, prevailing market price, MSI's list price, or the last price charged by MSI to Purchaser for the Products. Prices are subject to change without notice at any time prior to acceptance of this Contract by Purchaser.
- b. **Taxes:** Price does not include sales tax, use or excise tax, or similar taxes, which shall be the responsibility of, and paid by, Purchaser unless Purchaser shall provide MSI with a tax-exemption certificate acceptable to the taxing authorities. Prices also exclude VAT taxes or any other taxes or duties.
- c. **Changes:** Prices are subject to change caused by modifications of specifications or terms mutually agreed upon after Purchaser's acceptance of this Contract.
- d. **Increased Costs:** Prices are subject to adjustments caused by increased costs such as changes in surcharges placed on items such as stainless steel, fuel, etc.
- e. **EX WORKS:** Unless otherwise agreed by MSI in writing, Products shall be deemed to have been sold "EX WORKS" (EXW) (ready for collection). "EX WORKS" shall be defined in accordance with INCOTERMS 2010 of the International Chamber of Commerce, as may be amended from time to time.

### 3. ORDERS AND SHIPPING SCHEDULE

- a. **Orders:** Purchaser's orders or mutually agreed change orders shall be subject to all provisions of this Contract, whether or not the order or change-order so states.
- b. **Delivery:** MSI shall deliver the Products EX WORKS MSI's facility at 24 West Larson Drive, Fond-Du-Lac, WI 549387 (the "Facility"). All risk of loss, damage or delay shall pass from MSI to Purchaser upon MSI's delivery of the Products to the Facility. Partial shipments shall be permitted.
- c. **Delivery Dates:** All delivery dates are approximate. Delivery dates given by MSI are based on prompt receipt of all necessary information regarding the order. MSI will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by MSI to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence.
- d. **Delivery Delays:** In the event of delay in delivery requested by Purchaser or caused by Purchaser's (a) failure to supply adequate instructions or materials; (b) failure to arrange for pickup; (c) failure to supply or approve necessary data or actions in a timely manner; (d) requested changes; or (e) failure to provide documents required for MSI to effect delivery,

MSI will store all Products at Purchaser's risk and expense. Purchaser shall pay all storage costs and expenses upon MSI's demand.

- e. **Claims:** Claims for shortages or other errors must be made in writing to MSI within ten days after MSI's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Purchaser.
- f. **Changes:** Any completion date specified is subject to change caused by modification of specifications or terms mutually agreed upon after acceptance.
- g. **Force Majeure:** 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.
- h. **EXCLUSION OF DAMAGES: UNDER NO CIRCUMSTANCES SHALL MSI HAVE ANY LIABILITY WHATSOEVER FOR LOSS OF USE OR FOR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, SIMILAR OR DISSIMILAR, DUE TO DELAY IN SCHEDULED DELIVERY.**

#### 4. LIMITED WARRANTY

Purchaser shall be entitled to the following limited warranty for Products:

- a. **Warranty and Remedy:** Except as noted in subparagraph (h), below, any Products or parts thereof sold by MSI or supplied by MSI to Purchaser which, under normal operating conditions, prove materially defective in material or workmanship under normal use and service within one (1) year from the date of shipment will be repaired or replaced at MSI's option, excluding freight, insurance and installation, provided that Purchaser shall promptly send to MSI notice of the defect and establish to MSI's reasonable satisfaction that the Products have been properly installed, maintained and operated. At the option of MSI and in lieu of repairing or replacing the Products, MSI may refund the purchase price paid and receive back the Products which were furnished to Purchaser. The foregoing states Purchaser's sole remedy and MSI's sole and exclusive obligation under this limited warranty.
- b. **Warranty Exclusions:** 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. There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow MSI's instructions or improper installation, storage or maintenance.
- c. **NO OTHER WARRANTIES: 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. Any oral or written description of the Products or performance standards shall not be construed as an express warranty.**
- d. **EXCLUSION OF DAMAGES: 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 (INCLUDING LOSS OF PROFIT, LABOR, OR OTHER EXPENSES) WITH RESPECT TO PRODUCTS FURNISHED BY MSI OR ANYTHING DONE IN CONNECTION HERewith EVEN IF MSI WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** This limitation of damages applies to, but is not limited to: (i) loss of finished products or unprocessed raw materials caused by operator error, improper use of Products, software programming (whether intentional or unintentional) or failure to maintain Products;(ii) contamination of finished product or unprocessed raw materials due to insufficient cleaning or maintenance of Products or component parts; (iii) contamination of finished product or unprocessed raw materials due to Product wear and/or Product component failure (even if such Product component is under warranty); (iv) damage to or failure of Products or component parts due to failure to maintain Products or use Products as sets forth in Product manuals or documentation. This limitation of MSI liability applies whether any claim against MSI is based upon contract, tort option, replacement of the Products, or a refund of the purchase price upon return of the non-conforming Products to MSI.
- e. **Nontransferable:** The warranty is limited to the first purchaser and is not transferable.
- f. **Limitation Period:** 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. **Purchaser Changes:** If Purchaser, without the written consent of MSI, makes any changes to the structure or configuration of the Product 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 Products and Purchaser agrees to indemnify and hold MSI harmless form and against all such liability and expenses, including reasonable attorneys' fees with respect thereto.
- h. **Third Party Products:** If Products 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 Purchaser.
- i. **Assistance by MSI:** Any assistance MSI provides to or procures for Purchaser outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty. MSI will not reimburse Purchaser for any expenses incurred by Purchaser in

repairing or replacing any Products outside the terms of this limited warranty, except for those incurred with the prior written permission of an authorized representative of MSI.

- j. **CAP ON DAMAGES: MSI'S AGGREGATE LIABILITY WITH RESPECT TO A PRODUCT AND THIS CONTRACT SHALL BE LIMITED TO THE MONIES PAID TO MSI BY PURCHASER FOR THAT PRODUCT.**
- k. **Purchaser's Obligations:** Purchaser must satisfy the following obligations in order to be eligible for coverage by this Limited Warranty. Prior to using or permitting use of the Products, Purchaser shall determine the suitability of the Products for the intended use and Purchaser assumes all risk and liability whatsoever in connection therewith. Purchaser agrees that MSI has no post-sale duty to warn Purchaser or any other party about any matter or, if such duty exists, MSI satisfies that duty by providing any required warnings only to Purchaser. Purchaser assumes all post-sale duty to warn its customers and indemnifies MSI against any Damages (as defined below) in connection with such duty or failure to warn. Purchaser agrees to test and evaluate Product promptly upon receipt to ensure compliance with all specifications, quality requirements and other requirements of Purchaser's application. MSI does not guaranty the accuracy of information given and recommendations made as to suitability of Products for Purchaser's application or operating conditions. Nothing shall be construed to imply the nonexistence of any relevant patents or to constitute a permission, inducement or recommendation to practice any invention covered by any patent without authority from the patent owner. Purchaser agrees to familiarize itself with and comply with all laws and regulations now or hereafter in effect and applicable to the purchase, transport, use, supply, storage, sale, offer for sale, lease and/or disposal of the Products ("Laws") including, without limitation, to the extent applicable, the U.S. Foreign Corrupt Practices Act and all other antibribery laws, all U.S. antiboycott laws, and the U.S. Export Administration Act and all regulations thereunder. Purchaser assumes all risk with respect to Product compliance with applicable Laws

## 5. RETURNED PRODUCTS

- a. **Return Authorization:** In no case are Products to be returned without first obtaining written permission from MSI in the form of a return authorization number.
- b. **Costs and Risks:** Purchaser returning Products must pay transportation charges and bear risks of loss or damage to Products while in transit to and from MSI. MSI reserves the right to impose a restocking charge on returned Products.

## 6. 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 Contract. The Products shall be deemed accepted by Purchaser if Purchaser continues to use the Products or if Purchaser has not given written notice to MSI within ten (10) days of delivery of the Products to 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 Products.

## 7. CHANGES AND CANCELLATION

- a. **MSI Consent Required:** Orders may not be changed or cancelled without the written consent of MSI.
- b. **Payments Due:** In the event of a request to stop work or to cancel the whole or any part of an order, Purchaser shall make payment to MSI for the following:
  - i. Costs incurred by MSI in connection with this Contract up to the date of cancellation. In such event, less the sum of payments made to MSI, 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 Contract, whichever is greater.
  - ii. Any work scheduled for completion within 60 days of notice of Purchaser's cancellation will be paid in full and Purchaser will accept shipment.
  - iii. The parties agree that such payments constitute liquidated damages, and not a penalty, representing a good faith estimate of the damages MSI would suffer in the event of such work stoppage or cancellation.

## 8. PAYMENT TERMS

Unless otherwise agreed to in writing, Purchaser shall pay for the purchase price for the Products 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 Products 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. Notwithstanding the foregoing, terms of payment on all orders are subject to the approval of MSI's credit department. If Purchaser does not pay MSI any amount due under this Contract or any other agreement when such amount is due or if Purchaser defaults in the performance of this Contract, MSI may, without incurring liability to Purchaser and without prejudice to MSI's other lawful remedies (a) terminate MSI's obligations under this Contract; (b) declare immediately due and payable all Purchaser's obligations to MSI; (c) change credit terms with respect to any further work or deliveries; (d) suspend or

discontinue any further work or deliveries; and/or (e) repossess the Products. Purchaser agrees to reimburse MSI for all costs and fees including, but not limited to attorneys' fees and repossession fees, incurred by MSI in collecting any sums owed by Purchaser to MSI. Purchaser shall not set off amounts due to MSI against claims against MSI.

"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 by credit card for purchases in excess of \$1,500."

## 9. SECURITY AGREEMENT

Purchaser hereby grants to MSI a security interest under the provisions of the Uniform Commercial Code in all Products which are sold by MSI to Purchaser 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.

## 10. TITLE

Delivery of Products by MSI shall constitute transfer of title (subject to reservation of security interest) and ownership. Any carrier shall be deemed to be acting for Purchaser and the risk of loss of Products thereafter shall be Purchaser's.

## 11. USE/OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

- a. Purchaser or user is responsible 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 Products 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 Products is required for compliance.
- c. Products designed and manufactured by MSI are capable of being used in a safe manner, but MSI cannot guarantee their safety under all circumstances.

PURCHASER MUST INSTALL AND USE THE PRODUCTS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH AND SAFETY REGULATIONS AND LAWS AND TO A GENERAL STANDARD OF REASONABLE CARE.

## 12. ERRORS

This Contract and other quotations are subject to revision in case of clerical error.

## 13. HOLD HARMLESS/INDEMNITY

Purchaser hereby releases and agrees to indemnify, defend and hold harmless MSI and its shareholders, directors, officers, employees, agents, successors, assigns, affiliates and suppliers (individually and collectively, "MSI's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, losses, suits, demands, fines, penalties, judgments, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs ("Damages") incurred by or against MSI or any of MSI's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (a) misrepresentation or breach of this Contract, or violation of any law, by Purchaser or any of Purchaser's shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Purchaser's Parties"), or (b) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Purchaser or any of Purchaser's Parties, or (c) actions, threatened actions, losses, damages or injuries to person or property (including death) related to or caused by Purchaser's products, Purchaser's specifications, drawings, descriptions, designs, approvals or instructions provided to MSI, or by Purchaser's infringement of the patents or proprietary right of any other individual or entity, or due to improper application or use of the Products. Prior to settling any claim, Purchaser will give MSI an opportunity to participate in the defense and/or settlement of such claim. Purchaser shall not settle any claim without MSI's written consent. In the event of any recall affecting the Products, MSI shall have the right to control the recall process and Purchaser shall fully cooperate with MSI in connection with the recall.

#### 14. APPLICABLE LAW; DISPUTE RESOLUTION

This Contract and any disputes hereunder shall be interpreted and governed by the internal laws of the State of Wisconsin and the Federal laws of the United States of America without any reference to any rule or provision thereof which would cause the application of the law of any other jurisdiction. Neither this Contract nor sales hereunder shall be governed by the United Nations Convention on Contracts for the International Sale of Goods. Any dispute arising hereunder shall be adjudicated in a court located in Milwaukee County, Wisconsin.

#### 15. GENERAL

- a. **No Other Terms:** Acceptance of this Contract 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 Products quoted herein except as set forth herein or as otherwise set forth in writing and expressly made a part of this Contract.
- b. **Amendments:** All amendments and/or modifications shall be deemed to include each and every one of the provisions herein set forth.
- c. **"Products":** The term "Products" 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 Contract.
- d. **Authority:** The party accepting this Contract warrants that he/she has the authority to do so on behalf of Purchaser.
- e. **Severability; Waiver:** The invalidity of any provision or clause of this Contract shall not affect the validity of any other provision or clause hereof. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment or any right granted hereunder or the future performance of such term, covenant or condition.
- f. **Assignment:** Purchaser may not assign this Contract without MSI's prior written consent. MSI may assign this Contract in whole or in part, including without limitation to its affiliates, suppliers or subcontractors. Subject to the foregoing, this Contract shall inure to the benefit of, and be binding upon, the parties' successors and assigns.
- g. **Independent Contractor:** Purchaser is an independent contractor and neither Purchaser nor any of its employees or agents shall be considered an employee or agent of MSI, its affiliates or suppliers. Neither Purchaser nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on behalf of MSI, its affiliates or suppliers.
- h. **Survival:** MSI's warranty limitations and damage limitations, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the Contract for any reason.

#### 16. CONFIDENTIALITY; ENGINEERING DATA; TRADEMARKS

- a. **Confidentiality:** Both MSI and 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 (a) can be demonstrated to have been known to the receiving party or its affiliates or advisors prior to the date of this Contract, or after the date of this Contract but prior to the time of disclosure, (b) becomes generally available to the public other than as a result of a breach of this Contract, (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. Except as necessary to perform its duties under this Contract, Purchaser shall not use or disclose any of MSI's Confidential Information, but shall protect it using at least the same degree of care given its own confidential information, but in no event less than a reasonable degree of care. Upon expiration or termination of this Contract for any reason, Purchaser shall, within 15 days, surrender to MSI all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible objects and all copies thereof relating to Confidential Information and all of MSI's or its affiliates' or suppliers' property. Nothing in this Contract shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides a party, its affiliates or suppliers with broader protection than that provided herein.
- b. **Engineering Data:** All engineering data, design information and engineering and shop drawings used in the completion of this order are and shall remain MSI's property. Purchaser shall not copy, reproduce, distribute, publish or communicate to any third party such data without the prior, written permission of a properly authorized representative of MSI. Notwithstanding the foregoing, Purchaser shall distribute product data on operation, safety and maintenance information to the end user.
- c. **Trademarks:** Any use of MSI's or its affiliates' or suppliers' trademarks or other intellectual property shall be subject to MSI's prior written approval in each instance and such restrictions as MSI may, in its sole discretion, impose from time to time. Purchaser's use of MSI's trademarks, and any and all goodwill associated therewith, shall inure to MSI's or its affiliates' or suppliers' benefit. Purchaser agrees that neither it nor its affiliates will seek to register any such trademark, or any other trademark, service mark, or trade dress owned by MSI or its affiliates or suppliers, and if Purchaser or any of its affiliates does obtain such a registration, Purchaser or its affiliate shall immediately assign the same to MSI. Purchaser

shall not use MSI's trademarks in Purchaser's or its affiliates' company name. Purchaser acknowledges and agrees that MSI owns all right, title, and interest in and to MSI's trademarks. Except as otherwise agreed by MSI, Products sold by Purchaser shall bear MSI's trademarks, and Purchaser shall not remove or efface such trademarks. Purchaser will not sell any of the Products except as permitted by MSI and in connection with such trademarks, and will not repackage the Products in any manner and resell such Products utilizing a different trademark. Any use of MSI's or its affiliates' or suppliers' trademarks in advertisements or promotion must be preapproved in writing by MSI. Purchaser agrees to take all steps which MSI may from time to time consider to be necessary to perfect or protect MSI's or its affiliates' or suppliers' rights in such trademarks including, without limitation, executing all necessary assignments, declarations, and other documents requested by MSI from time to time. Upon expiration or termination of this Contract for any reason, Purchaser shall take such steps and execute such documents as MSI requests to cause MSI or its affiliates or suppliers to own all rights in the trademarks and to terminate any rights Purchaser or its affiliates may have to use such trademarks. Purchaser shall inform MSI promptly of any potential or actual infringement of any of MSI's or its affiliates' or suppliers' trademarks and shall provide all assistance and information required by MSI, at MSI's expense, in connection with any such infringement.

#### **17. 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.

#### **18. TEST MATERIALS**

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

#### **19. 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 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 of Products. If any such modification alters the performance or prevents the Products from performing in a manner which otherwise would have been reasonably anticipated by MSI, MSI shall not be liable therefor and shall not be required to take any action to meet the revised performance specifications.

## TERMS AND CONDITIONS: SOFTWARE LICENSE (March 27, 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.

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

- b. Copies. Customer may make copies of the Software for back-up and disaster recovery purposes and to enable Customer to create and/or test Modified Code in a non-production environment, provided that Customer shall use its best efforts to safeguard such copies of the Software to prevent them from being stolen, copied or disseminated to any third parties.
        - c. Export Restrictions. Customer acknowledges that the Software may be subject to export restrictions of various countries. Customer agrees to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end user, end use, and destination restrictions issued by U.S. and other governments.
4. Installation and Configuration. Customer shall grant MSI access to the location at which the Equipment is installed during regular business hours for the period of time required for such installation and configuration. Upon completion of installation and configuration, MSI shall notify Customer that installation and configuration of the Base Code has been completed. Upon completion of the installation and configuration of the Base Code, Customer shall verify that the Base Code has been successfully installed and configured and execute the "Acceptance Form" attached to this Agreement as Appendix A. Customer shall have thirty (30) days to notify MSI in writing of any defect or error related to the installation and configuration of the Base Code, and MSI shall re-perform installation, configuration and testing of the Base Code on the Equipment at no additional cost to Customer. If Customer requires MSI to re-install, re-configure or provide maintenance and support services related to the Base Code as a result of modifications made to the Base Code by Customer, such services shall be performed at MSI's then current professional services rates.
5. Termination. MSI may terminate this License Agreement if Customer commits a material breach of any terms and conditions contained herein and fails to cure such breach within thirty (30) days after receiving written notice from MSI.
6. Ownership.
  - a. Base Code. Customer acknowledges and agrees that MSI is the owner of all rights, title and interest (including, without limitation, patent, copyright, trade secret, trademark and other proprietary rights) in and to the Base Code, its technical specifications and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Base Code made by MSI.
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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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