



General Terms and Conditions of Purchase

1. Applicability.

(a) These terms and conditions of purchase (these “**Terms**”) are the only terms which govern the purchase of the goods (“**Goods**”) or services (“**Services**”) by Brentwood Industries, Inc. (“**Purchaser**”) from the Supplier named on the reverse side of these Terms (“**Supplier**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and/or Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying purchase order printed on the reverse side of these Terms (the “**Purchase Order**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Supplier’s general terms and conditions of sale regardless whether or when Supplier has submitted its sales confirmation or such terms. This Agreement expressly limits Supplier’s acceptance to the terms of this Agreement. Fulfillment of the Purchase Order constitutes acceptance of these Terms.

2. Delivery of Goods and Performance of Services.

(a) Supplier shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If Supplier fails to deliver the Goods in full on the Delivery Date, Purchaser may terminate this Agreement immediately by providing written notice to Supplier and Supplier shall indemnify Purchaser against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier’s failure to deliver the Goods on the Delivery Date.

(b) Supplier shall deliver all Goods to the address specified in the Purchase Order (the “**Delivery Point**”) during Purchaser’s normal business hours or as otherwise instructed by Purchaser. Supplier shall pack all goods for shipment according to Purchaser’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier must provide Purchaser prior written notice if it requires Purchaser to return any packaging material. Any return of such packaging material shall be made at Supplier’s risk of loss and expense.

(c) Supplier shall provide the Services to Purchaser as described and in accordance with the schedule set forth on the reverse side of these Terms and in accordance with the terms and conditions set forth in these Terms.

(d) Supplier acknowledges that time is of the essence with respect to Supplier’s obligations hereunder and the timely delivery of the Goods and/or Services.

3. Quantity. If Supplier delivers more than the quantity of Goods ordered, Purchaser may reject all or any excess Goods. Any such rejected Goods shall be returned to Supplier at Supplier’s sole risk and expense. If Purchaser does



not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. Shipping Terms. Delivery shall be made in accordance with the terms on the face of this Agreement. The Purchase Order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Purchase Order.

5. Title and Risk of Loss. Title and risk of loss passes to Purchaser upon delivery of the Goods at the Delivery Point.

6. Inspection and Rejection of Nonconforming Goods. Purchaser has the right to inspect the Goods on the Delivery Date or up to ninety (90) days after said Delivery Date. Purchaser, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Purchaser rejects any portion of the Goods, Purchaser has the right, effective upon written notice to Supplier, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Purchaser requires replacement of the Goods, Supplier shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Supplier fails to timely deliver replacement Goods, Purchaser may replace them with goods from a third party and charge Supplier the cost thereof and terminate this Agreement for cause pursuant to Section 17. Any inspection or other action by Purchaser under this Section shall not reduce or otherwise affect Supplier's obligations under the Agreement, and Purchaser shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

7. Price. The price of the Goods and/or Services is the price stated in the Purchase Order (the "**Price**"). If no price is included in the Purchase Order, the Price shall be the price set out in Supplier's published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Purchaser.

8. Payment Terms. Supplier shall issue an invoice to Purchaser on or any time after the completion of delivery and only in accordance with these Terms. Purchaser shall pay all properly invoiced amounts due to Supplier within 30 days, unless otherwise stated on the face of the Purchase Order, after Purchaser's receipt of such invoice, except for any amounts disputed by Purchaser in good faith. Without prejudice to any other right or remedy it may have, Purchaser reserves the right to set off at any time any amount owing to it by Supplier against any amount payable by Purchaser to Supplier under this Agreement.

9. Supplier's Obligations Regarding Services. Supplier shall:

(a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;

(b) comply with all rules, regulations and policies of Purchaser, including security procedures concerning systems and data and remote access thereto, building security procedures, and general health and safety

practices and procedures;

(c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Supplier in providing the Services in such form as Purchaser shall approve. During the term of this Agreement and for a period of two (2) years thereafter, upon Purchaser's written request, Supplier shall allow Purchaser to inspect and make copies of such records and interview Supplier personnel in connection with the provision of the Services;

(d) obtain Purchaser's written consent, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Supplier, other than Supplier's employees, to provide any Services to Purchaser (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Purchaser's approval shall not relieve Supplier of its obligations under the Agreement, and Supplier shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Supplier's own employees. Nothing contained in this Agreement shall create any contractual relationship between Purchaser and any Supplier subcontractor or supplier;

(e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Purchaser's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Purchaser;

(f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Supplier, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Purchaser; and

(h) keep and maintain any Purchaser equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Purchaser's written instructions or authorization.

10. Change Orders. Purchaser may at any time, by written instructions and/or drawings issued to Supplier (each a "**Change Order**"), order changes to the Services. Supplier shall within 3 days of receipt of a Change Order submit to Purchaser a firm cost proposal for the Change Order. If Purchaser accepts such cost proposal, Supplier shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Supplier acknowledges that a Change Order may or may not entitle Supplier to an adjustment in the Supplier's compensation or the performance deadlines under this Agreement.

11. Warranties.

(a) Supplier warrants the Goods to Purchaser according to the manufacturer of Goods published specifications or for a period of 12 months from the Delivery Date, whichever is the greater of the two. All Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, samples and other requirements specified by Purchaser and/or set forth in

Exhibit A; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Purchaser;

(b) Supplier warrants to Purchaser that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

(c) the warranties set forth in this Section 11.1 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Purchaser's discovery of the noncompliance of the Goods and/or Services with the foregoing warranties. If Purchaser gives Supplier notice of noncompliance pursuant to this Section, Supplier shall, at its own cost and expense, promptly within 10 days (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Supplier and the delivery of repaired or replacement Goods to Purchaser, and, if applicable, (ii) repair or re-perform the applicable Services.

12. General Indemnification. Supplier shall defend, indemnify and hold harmless Purchaser and Purchaser's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods and/or Services purchased from Supplier or Supplier's negligence, willful misconduct or breach of the Terms. Supplier shall not enter into any settlement without Purchaser's prior written consent.

13. Intellectual Property Indemnification. Supplier shall, at its expense, defend, indemnify and hold harmless Purchaser and any Indemnitee against any and all Losses arising out of or in connection with any claim that Purchaser's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Supplier enter into any settlement without Purchaser's or Indemnitee's prior written consent.

14. Limitation of Liability. Nothing in this Agreement shall exclude or limit (a) Supplier's liability hereof, or (b) Supplier's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

15. Insurance. Supplier shall purchase insurance as described below through an insurance company or companies which carry an A.M. Best Company financial strength rating of A- or better. Such insurance shall be written for not less than the limits specified below, or the minimum limits specified below.

Commercial General Liability including coverage for Ongoing Operations, Products and Completed Operations, Contractual Liability and Personal & Advertising Injury. The following MINIMUM limits shall apply:

- \$1,000,000 Any One Occurrence – Bodily Injury and Property Damage
- \$1,000,000 Personal & Advertising Injury – Any One Occurrence
- \$2,000,000 Products/Completed Operations Aggregate



\$2,000,000 General Aggregate

General Liability insurance shall be written on an "occurrence" form and shall name Purchaser and Purchaser's officers, directors, employees and representatives as Additional Insured for both Ongoing Operations and Products & Completed Operations, to be made available to Purchaser on request. Products and Completed Operations coverage shall be maintained with the same limits as above for three (3) years, commencing with final acceptance and payment by Purchaser.

Umbrella/Excess Liability to extend additional limits of coverage over the Supplier's General Liability, with limits of:

\$5,000,000 Each Occurrence

\$5,000,000 Aggregate

Umbrella/Excess liability insurance shall be written on an "occurrence" form, and shall name Purchaser and Purchaser's officers, directors, employees and representatives as Additional Insureds, as requested.

Supplier agrees to waive all rights of subrogation against Purchaser and Purchaser's General Liability and Umbrella policies shall be endorsed to accomplish such waivers.

All required policies must provide Purchaser with a minimum of thirty (30) days advance written notice of an insurer's intent to cancel or non-renew coverage, with the exception of cancellation for non-payment of premium, which requires a minimum of ten (10) days written notice. A failure to maintain ongoing insurance, with no lapse in coverage, is considered to be a breach of this Agreement.

Prior to beginning any work under this Goods and/or Services, Supplier will furnish a Certificate of Insurance to Purchaser, showing evidence of the required insurance policies, limits and terms. A replacement Certificate must be provided prior to the expiration date of any required policy. Upon request, Supplier agrees to furnish copies of required policies and endorsements.

16. Compliance with Law. Supplier shall comply with all applicable laws, regulations and ordinances. Supplier shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Supplier shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Supplier. Supplier assumes all responsibility for shipments of Goods requiring any government import clearance. Purchaser may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

17. Termination. In addition to any remedies that may be provided under these Terms, Purchaser may terminate this Agreement with immediate effect upon written notice to the Supplier, either before or after the acceptance of the Goods or the Supplier's delivery of the Services, if Supplier has not performed or complied with any of these Terms, in whole or in part. If the Supplier becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Purchaser may terminate this Agreement upon written notice to Supplier. If Purchaser terminates the Agreement for any reason, Supplier's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by Purchaser prior to the termination.

18. Waiver. No waiver by Purchaser of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Purchaser. No failure to exercise, or delay in exercising, any right, remedy, power

or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Confidential Information. “Confidential Information” means all non-public, confidential or proprietary information disclosed (whether disclosed orally or reduced to writing or other tangible medium of expression, whether or not marked or otherwise designated as confidential) on or after the Effective Date of this Order by Purchaser to Supplier for the Term of this Order.

- i) Supplier agrees to protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Supplier would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care.
- ii) Supplier agrees not to use Purchaser’s Confidential Information, or permit it to be accessed or used, for any purpose other than the Order. Supplier agrees not to use the Confidential Information in any manner to Purchaser’s detriment, including without limitation, to reverse engineer, disassemble, decompile, copy, modify, develop, or design around the Purchaser’s proprietary services, products or intellectual property or to allow any other entity or individual do so.
- iii) Supplier agrees not to disclose the Confidential Information to any of Supplier’s employees other than those needing to use the Confidential Information for the limited purposes of this Order. Any employee of Supplier who receives information is bound to the same terms of confidentiality in relation to this Order. No other disclosure of Confidential Information is allowed unless written permission is granted by Purchaser.
- iv) Supplier will not seek to obtain patent or copyright or other intellectual property rights or protection for Purchaser’s Confidential Information in the United States or elsewhere in the world. If such rights or protection are sought or obtained, then such protection shall be deemed to have been held in trust as an agent of Purchaser, this Order constituting an assignment and transfer of such rights and protection to Purchaser, without payment or other additional consideration. Supplier agrees to sign any documents deemed necessary by Supplier to formalize and record any such assignment or transfer of such rights or protection upon demand by Purchaser without payment or other additional consideration.

20. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party’s fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (“**Force Majeure Event**”). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Supplier’s economic hardship or changes in market conditions are not considered Force Majeure Events. Supplier shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement.

21. Assignment. Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under



this Agreement without the prior written consent of Purchaser. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder. Purchaser may at any time assign or transfer any or all its rights or obligations under this Agreement without Supplier's prior written consent to any affiliate or to any person acquiring all or substantially all of Purchaser's assets.

22. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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.

23. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and 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 this Agreement.

24. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the State of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Pennsylvania.

25. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Pennsylvania in each case located in the City of Reading and County of Berks, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

26. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail (with read receipt requested) or certified or registered mail (in each case, read receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

27. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

29. Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.