

Standard Terms and Conditions

1. Definitions.

(a) **“Accepted Purchase Order”** means a Purchase Order that has been accepted by TMT by one or more of the following means: (1) express written acceptance of such Purchase Order by an officer of TMT; (2) performance of Services or any part thereof by TMT; or (3) delivery of Goods or any part thereof by TMT.

(b) **“Amendment”** means a writing that specifically states that it amends these Terms and is signed by an authorized agent of Customer and an officer of TMT.

(c) **“Basic Order Specifications”** mean, collectively, those terms in an Accepted Purchase Order that (1) do not conflict with any provision of these Terms or the Summary Terms; and (2) consist only of one or more of the following items: (i) Customer’s name and contact information; (ii) a list of certain Goods and their quantities; (iii) the nature of Services requested; (iv) the estimated delivery date for Goods after completion of Services; (v) Price; and (vi) Destination.

(d) **“Claim Notice”** has the meaning set forth in Section 17(e).

(e) **“Collateral”** has the meaning set forth in Section 8(a).

(f) **“Customer”** means any person that delivers an order, request, offer, inquiry, or similar communication in written or oral form to TMT either directly or through any representative of such person, including but not limited to such person’s employees, agents, officers, directors, shareholders, members, managers, and partners.

(g) **“Delayed Shipment Date”** means, in the event of a delayed delivery of Goods or a portion of Goods, the date of the thirtieth (30th) day after the date most recently estimated by TMT to be the delivery date for such delayed Goods or portion of Goods.

(h) **“Destination”** means the street address specified in an Accepted Purchase Order as the requested point of delivery for Goods after the performance of Services.

(i) **“Developed Intellectual Property”** means any and all Intellectual Property that is made, invented, developed, created, conceived, or reduced to practice by TMT as a result of or during the course of the performance of Services or any other work conducted by TMT pursuant to any Purchase Order, Accepted Purchase Order, or any other communication from Customer or any other person.

(j) **“Dispute”** means any dispute, claim, or controversy arising out of or relating to any Purchase Order; Accepted Purchase Order; Goods; Services; Summary Terms; these Terms; or any communication, interaction, or transaction between TMT and Customer—including any such dispute, claim, or controversy as may relate to any alleged breach, termination, interpretation, or invalidity of any of the foregoing items and agreements.

(k) **“FOB”** has the meaning set forth in Section 5(d).

(l) **“Goods”** and **“the Goods”** means any items of property that are at present time subjected, were subjected, may be potentially subjected, or will be subjected to Services pursuant to a written or oral communication from Customer to TMT.

(m) **“Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

(n) **“Indemnified Party”** has the meaning set forth in Section 17(a).

(o) **“Indemnifying Party”** has the meaning set forth in Section 17(a).

(p) **“Inspection Period”** and **“the Inspection Period”** means, with respect to any Goods, a period that begins immediately upon receipt of such Goods by Customer from TMT and ends five (5) days after Customer’s receipt of such Goods.

(q) **“Intellectual Property”** means (1) Patents; (2) Trademarks; (3) Internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and URLs; (4) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other documentation; (5) Trade Secrets; (6) specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, refunds, and rebates; (7) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing items, however arising, regardless of whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction in any part of the world.

(r) **“Intellectual Property Rights”** means all industrial and other intellectual property rights comprising or relating to Intellectual Property.

(s) **“Law”** and its plural variant **“Laws”** means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, or other requirement or rule of law of any Governmental Authority.

(t) **“Losses”** has the meaning set forth in Section 17(a).

(u) **“Nonconforming Goods”** means only the following: (1) Goods that are different in quantity or quality than identified in an Accepted Purchase Order; or (2) Goods that are accompanied by an incorrect label or other form of identification.

(v) **“Notice”** and its plural variant **“Notices”** means any notice, request, consent, claim, demand, waiver, and other communications that is required or

permitted to be sent by one Party to another Party under these Terms.

(w) **“Parties”** and **“the Parties”** means TMT and Customer collectively.

(x) **“Party”** and **“the Party”** means TMT or Customer individually.

(y) **“Patents”** means all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other indicia of invention ownership issued by any Governmental Authority (including inventor’s certificates, petty patents and patent utility models).

(z) **“Price”** has the meaning set forth in Section 11(a).

(aa) **“Purchase Order”** and its plural variant **“Purchase Orders”** means any written communication(s) by Customer, on one or more forms supplied by TMT or expressly approved by TMT for such use by Customer, requesting that TMT enter into a transaction with Customer.

(bb) **“Services”** and **“the Services”** means heat treating services, thermal processing services, and any other services that were performed, are being performed, may be potentially performed, or will be performed by TMT pursuant to a written or oral communication from Customer to TMT.

(cc) **“Summary Terms”** and **“the Summary Terms”** means that certain agreement between Customer and TMT that is titled Summary Terms and Conditions, which summarizes certain provisions of these Terms, provides the Internet URL where these Terms may be found, and expressly incorporates these Terms by reference.

(dd) **“Terms”** and **“these Terms”** means these Standard Terms and Conditions, dated as of the date initially shown above.

(ee) **“Third-Party Product”** means any items of property that are manufactured, tested, processed and/or modified in any way by any person other than TMT.

(ff) **“TMT”** means Thermal Modification Technologies, Inc., an Oregon business corporation.

(gg) “TMT Facility” and “the TMT Facility” means 19830 SW Teton Avenue, Tualatin, Oregon 97062, USA—or any other address that TMT may designate or use in its sole and exclusive discretion for any part of TMT’s business activities.

(hh) “Trademarks” means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names and domain names, and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

(ii) “Trade Secrets” means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein.

2. Applicability.

(a) These Terms govern any and all communications, interactions, and transactions between TMT and Customer, including but not limited to such communications, interactions, and transactions as may relate to any Goods, Services, or a combination of Goods and Services. Customer’s ability to receive attention from TMT with respect to any actual or prospective Purchase Order is hereby expressly conditioned upon Customer’s acceptance of these Terms and the Summary Terms.

(b) By choosing to enter into one or more communications, interactions, or transactions with TMT, Customer represents that it is capable of entering into a legally binding agreement, and that Customer agrees to be bound by these Terms and the Summary Terms. In the event that Customer has not viewed the Summary Terms, the applicability and enforceability of these Terms shall remain unaffected.

(c) The Summary Terms, these Terms, and any Basic Order Specifications in an Accepted Purchase Order comprise the entire agreement between the Parties with respect to any and all Goods and Services, and supersede all prior and contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, whether written or oral, between the Parties with respect to such Goods and Services.

(d) TMT hereby expressly objects to and rejects any terms and conditions of a Purchase Order or any other communication from Customer that are different from or in addition to any part of these Terms. These Terms prevail over any terms and conditions that may be proposed by Customer and that are different from or in addition to these Terms.

(e) Fulfillment of a Purchase Order does not constitute acceptance by TMT of any terms and conditions that may be proposed by Customer. Fulfillment of a Purchase Order does not suffice or serve to modify or amend these Terms in any way. TMT will entertain any proposal from Customer to modify these Terms with respect to any communication, interaction, or transaction between TMT and Customer, but such proposed modification may require additional consideration or an increased Price, and must fully comply with Section 9 before such proposed modification may have any effect on the rights and obligations of Customer and TMT.

(f) TMT shall have the right and power to revise, amend, delete, or add provisions to these Terms from time to time in TMT’s sole and exclusive discretion, and without any further Notice to Customer. The most current version of these Terms posted at the Internet website belonging to TMT as of the date of any communication, interaction, or transaction between TMT and Customer will govern such communication, interaction, or transaction between TMT and Customer.

(g) In the event of any conflict between (1) these Terms and (2) the Summary Terms; the terms of any Accepted Purchase Order; or any other written or oral communication, these Terms shall prevail and govern to the exclusion of any conflicting provision.

3. Order and Acceptance.

(a) Customer must supply all Purchase Orders to TMT via in-person delivery, facsimile, electronic mail, US mail, or private mail carrier. Customer must cause all Purchase Orders to contain Basic Order Specifications except Price, which shall be specified by TMT and paid by Customer in accordance with Section 11 and Section 12.

(b) By supplying a Purchase Order, Customer makes an offer to enter into a transaction with TMT that is governed by these Terms as supplemented by the Summary Terms and any Accepted Purchase Order, and not governed by any other terms or conditions.

(c) TMT hereby expressly objects to and rejects any terms, provisions, and contents of a Purchase Order or any other communication from Customer that are not Basic Order Specifications. As a result, any terms, provisions, and contents of a Purchase Order or other communication to TMT that are not Basic Order Specifications are automatically null, void, and of no effect without any requirement for further Notice from TMT.

(d) Customer has sole responsibility over the accurate communication, desirability, and fitness of Basic Order Specifications as they relate to the general and/or particular purpose(s) for which Goods are required, and/or as they relate to any other purposes, plans, wishes, or interests of Customer.

(e) Customer shall not rely on the skill or judgment of TMT to prepare, select, or clarify either Basic Order Specifications or any portion of any Purchase Order, even if TMT has reason to know of any general and/or particular purpose(s) for which Goods subject to such Purchase Order are required and/or any other purposes, plans, wishes, or interests of Customer.

(f) TMT shall have no obligation to check, test, confirm, or analyze in any way whatsoever whether Goods delivered by Customer to TMT (1) exhibit any particular nature or level of structural, physical, or chemical composition or strength; (2) exhibit any particular level of suitability for application of any Services; (3) may be prone to any particular level of shrinkage, expansion, deformity, rupture, or any other kind of change, alteration, or damage either before, during, or any after the application of any Services—regardless of whether such change, alteration, or other type of damage occurs by reason of heat treating, quenching, straightening, cleaning, or by reason of any other operation or task, whether such operation or task is performed by TMT or any other person.

(g) TMT has the right, in its sole and exclusive discretion, to accept or reject any Purchase Order. A Purchase Order is not binding on TMT, and remains merely an offer without any rights or obligations of an agreement, unless and until such Purchase Order becomes an Accepted Purchase Order.

(h) TMT may, in its sole and exclusive discretion, and without any liability or penalty, cancel and terminate any Accepted Purchase Order if TMT determines in its sole and exclusive discretion that:

(i) Customer is in violation of any payment obligation;

(ii) Customer has breached or is in breach of these Terms or any other agreement between TMT and Customer; or

(iii) Customer's financial condition or creditworthiness is inadequate or unsatisfactory under Section 4.

(i) With the exception of Customer's right to cancel a Purchase Order pursuant to Section 5(g), Customer shall have no right to cancel or amend any Purchase Order or Accepted Purchase Order.

4. Unsatisfactory Credit Status. Customer shall furnish TMT with statements evidencing Customer's financial condition as TMT may, from time to time, reasonably request. Customer shall send immediate Notice to TMT of any and all events that may have a material adverse effect on Customer's business or financial condition. If TMT determines in its sole and exclusive discretion that Customer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to any of TMT's other rights, TMT may without liability or penalty take one or more of the following actions in its sole and exclusive discretion:

(a) accelerate all amounts owed by Customer to TMT under these Terms and/or any Accepted Purchase Order so that all such amounts become immediately due and payable by Customer;

(b) request additional payment assurance for purposes of Customer's outstanding and future Purchase Orders, including but not limited to requiring Customer to pay cash in advance when delivering a Purchase Order to TMT;

(c) cancel any and all Purchase Orders previously accepted or received from Customer; and/or

(d) delay the performance of any Services and/or delivery of Goods to Customer.

5. Delivery.

(a) Services will be performed within a reasonable time after the existence of an Accepted Purchase Order and Customer's corresponding delivery of Goods to TMT. The reasonability of the time required to perform Services will be subject to

availability of any material or any other resources required for the performance of Services. TMT shall not be liable for any delays, loss, or damage of Goods that are in transit between the Parties.

(b) Unless otherwise expressly agreed to by the Parties in writing, TMT shall select the method of delivery and the shipping carrier (if any) by which to deliver Goods to Destination.

(c) TMT may, in its sole and exclusive discretion, and without liability or penalty, make partial shipments or deliveries of Goods to Customer. Each shipment or delivery of Goods by TMT will constitute a separate sale to Customer, and Customer shall pay for any and all units shipped or delivered on a pro rata basis, regardless of whether such shipment or delivery is in whole or partial fulfillment of a Purchase Order. Other than as provided under Section 10, Customer shall not be entitled to object to or reject Goods or any portion of Goods by reason of any variation between the quantity of Goods shipped or delivered, and the quantity of Goods stated in an Accepted Purchase Order.

(d) Delivery shall be made free on board (“**FOB**”) the TMT Facility or FOB any other location designated by TMT in its sole and exclusive discretion for this purpose.

(e) Customer shall, without any cost to TMT, supply (or secure from a third party) any labor, equipment, and facilities that may be required to unload Goods at Destination.

(f) If for any reason Customer fails to accept delivery of any of Goods on the date of such Goods’ delivery at Destination, or if TMT is unable to deliver Goods at Destination on such date because Customer has not provided appropriate instructions, documents, licenses, or authorizations, then: (1) risk of loss to Goods shall automatically and immediately pass to Customer; (2) Goods shall be automatically and immediately deemed to have been delivered; and (3) TMT shall have a right but not an obligation to store Goods until Customer takes possession of such Goods, whereupon Customer shall be liable for all of TMT’s related costs and expenses of storing Goods (including, without limitation, storage and insurance).

(g) Any time quoted by TMT for delivery of Goods to Customer is an estimate only, and TMT shall have the right and power to update such estimated delivery date from time to time during its work on an Accepted Purchase Order. TMT is not liable for or in respect of any loss or damage arising

from any delay in filling any order, failure to deliver, or delay in delivery. However, if TMT delays shipment of all or any Goods until a Delayed Shipment Date arises with respect to such Goods or a portion thereof, then Customer may, as its sole remedy for such delay, cancel that portion of any Purchase Order that relates to the delayed Goods or a portion thereof—provided that such cancellation shall take effect no earlier than thirty (30) days after the Delayed Shipment Date. As a condition precedent for any effective cancellation of a Purchase Order under this Section 5(g), Customer must first give Notice to TMT within five (5) days after a Delayed Shipment Date arises with respect to any Goods or a portion thereof. No cancellation shall be valid under this Section 5(g) with respect to any Goods if Customer fails to provide timely Notice under this Section 5(g) of a Delayed Shipment Date that has arisen with respect to such Goods.

(h) No delay in the shipment or delivery of any Goods relieves Customer of its obligations under these Terms, including without limitation Customer’s obligation to accept delivery of any remaining installment(s) of Goods.

6. Delays and Non-Delivery.

(a) The quantity of any installment of Goods as recorded by TMT on dispatch from the TMT Facility is conclusive evidence of the quantity received by Customer on delivery, unless Customer provides conclusive evidence proving the contrary within ten (10) days of the dispatch of such Goods from the TMT Facility.

(b) TMT shall not be liable for any delay, non-delivery, loss, or damage of any Goods by any third party, such as a shipping carrier.

(c) TMT shall not be liable for any non-delivery of Goods (even if caused by TMT’s negligence) unless Customer gives Notice to TMT of the non-delivery within five (5) days after the date when Goods would have been received in the ordinary course of events.

(d) Any liability of TMT for non-delivery of Goods is hereby limited to either replacing Goods or remitting to Customer the fair market value of such Goods at TMT’s option within a reasonable time, or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

7. Title and Risk of Loss.

(a) Except as may be permitted by Law (e.g., by reason of Customer's failure to pay any Price or perform any other monetary or non-monetary obligation owed to TMT, or for any other reason) these Terms do not affect, modify, or alter legal title to any Goods.

(b) No bailment is created by these Terms with respect to any Goods, and neither do the Parties intend for Customer to have any rights or duties as a bailor of any Goods or for TMT to have any rights or duties as a bailee of any Goods. TMT shall have no obligation to purchase or maintain insurance coverage for any Goods under these Terms.

(c) Risk of loss to all Goods remains at all times with Customer and/or the actual holder(s) of title or interest in such Goods—and in no case shall the risk of loss to any Goods shift to TMT. Risk of loss remains with Customer upon delivery of such Goods to TMT, during performance of Services by TMT, and upon tender of such Goods by TMT to a shipping carrier, or, if no shipping carrier has been selected, then upon tender of such Goods at Destination.

8. Security Interest.

(a) In applying Services to Goods in accordance with these Terms, TMT provides value that enables Customer to acquire use of Goods in their then-current form after application of the Services. As collateral security for the payment of any Price and performance in full of all the obligations of Customer under these Terms, Customer hereby grants to TMT a lien on and security interest in and to all of the right, title, and interest of Customer in, to and under Goods, 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 (collectively, "**Collateral**"). The security interest granted under this Section 8(a) constitutes a purchase-money security interest under the Oregon Uniform Commercial Code. For avoidance of doubt, if the security interest granted under this Section 8(a) is at any time found not to be a purchase-money security interest, then the security interest granted under this Section 8(a) shall remain in full force and effect, except that Collateral shall not be treated as purchase-money collateral under the Oregon Uniform Commercial Code.

(b) The security interest granted under Section 8(a) is separate from and in addition to any liens and security interests that may arise by agreement, by law, or in any other way whatsoever in favor of TMT with respect to the right, title, and interest of Customer in, to, and under any property whatsoever, wherever located, and whether now existing or hereafter arising or acquired.

(c) TMT shall have, and Customer grants to TMT, the authority to file any financing statements that TMT deems necessary to perfect and continue TMT's security interest in Collateral, along with any property referenced in Section 8(b). Upon TMT's request, Customer will take any actions that TMT deems necessary to perfect and continue TMT's security interest in Collateral and any property referenced in Section 8(b).

9. Amendment and Modification. These Terms may only be amended, modified, or supplemented by an Amendment. Except for terms in an Amendment that are expressly, specifically, and individually identified as being different from or in addition to these Terms, TMT hereby rejects any terms in any discussion, letter, acknowledgment form, Purchase Order, or any other written or oral communication that are different from or in addition to these Terms.

10. Inspection of Goods.

(a) Customer shall inspect any and all Goods during the Inspection Period. Customer will be deemed to have accepted Goods unless Customer delivers Notice to TMT of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as TMT may require in its sole and exclusive discretion. Any such Notice regarding Goods thought to be Nonconforming Goods by Customer must be accompanied by the freight bill for such Goods from TMT with notation added by an authorized agent of Customer to indicate the reason(s) that such Goods are thought to be Nonconforming Goods by Customer.

(b) Any Notice regarding Goods that are thought to be Nonconforming Goods by Customer will be automatically null, void, and of no effect if such Notice is delivered to TMT after the Inspection Period has ended for such Goods.

(c) If Customer timely notifies TMT under Section 10(a) of any Goods thought to be Nonconforming Goods, and TMT in its sole and

exclusive discretion finds such Goods to be Nonconforming Goods, then TMT may, in its sole and exclusive discretion: (1) replace or supplement such Nonconforming Goods with Goods conforming to the applicable Purchase Order; or (2) credit or refund any Price that Customer has actually paid for such Nonconforming Goods.

(d) If TMT exercises its option to replace Nonconforming Goods under Section 10(c), then Customer shall ship the Nonconforming Goods to the TMT Facility at Customer's sole expense and risk of loss. If Customer ships the Nonconforming Goods in such fashion, then TMT shall, after receiving Customer's shipment of Nonconforming Goods, ship the replacement Goods to Destination at Customer's expense and risk of loss. If Customer fails to ship any Goods as may be required by this Section 10(d), such failure will operate as Customer's agreement to accept such Goods and to perform all of Customer's obligations in connection with such Goods to the same extent as if neither Party considered such Goods to be Nonconforming Goods.

(e) Customer acknowledges and agrees that the remedies set forth in this Section 10 are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 10(d), all deliveries of Goods by TMT are final and Customer has no right to return to TMT any Goods delivered by TMT to Customer.

11. Price.

(a) TMT shall specify and Customer shall pay to TMT an amount ("**Price**") for Services that takes into account any one or more factors, including but not limited to: (1) applicable hourly rates; (2) applicable flat rates; (3) expenses; and (4) formulas or figures provided to Customer in a written document signed by an officer of TMT and intended for the purpose of calculating a Price for an Accepted Purchase Order, and not intended as a mere estimate for prospective services.

(b) All Prices are separate and exclusive of all shipping charges; insurance costs; as well as city, state, federal, and other taxes—including with limitation, all excise taxes and taxes on manufacture, sales, receipts, occupation, use, 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, duties, and taxes, and Customer shall immediately reimburse TMT in the event that TMT

initially pays such charges, costs, duties, and taxes to any third party.

12. Payment Terms.

(a) Full payment is due from Customer to TMT thirty (30) days after the date of each invoice from TMT to Customer. Customer shall make all payments in US dollars by wire transfer, check, or other payment method that is acceptable to TMT.

(b) Customer shall pay interest on all late payments at the lesser rate of 1.5% per month, or the highest rate permissible under applicable Law, calculated daily, and compounded monthly. Customer shall reimburse TMT for all costs incurred in collecting any late payments, including but not limited to attorneys' fees. In addition to all other remedies available under these Terms or by Law, TMT shall be entitled to immediately suspend the delivery of any Goods if Customer fails to pay any amounts when due under these Terms.

(c) Customer hereby expressly waives any right and power to withhold payment of any amounts due and payable to TMT, including such right and power as might otherwise exist by reason of any set-off claim or Dispute. Customer shall not attempt to withhold any payments for amounts owed to TMT, whether by reason of any perceived breach by TMT of any agreement or for any other reason, including but not limited to any actual or anticipated insolvency or bankruptcy of any person.

13. Invoice Disputes. Customer shall deliver Notice to TMT of any Dispute concerning an invoice from TMT, along with a reasonably detailed description of the Dispute, within five (5) days from the date of Customer's receipt of such invoice. The Parties shall handle any Dispute expeditiously, in good faith, and in accordance with Section 22. Customer shall continue to perform Customer's obligations under these Terms during any Dispute, including, without limitation, Customer's obligation to pay all invoiced amounts due to TMT. Customer will be deemed to have no disagreement with any invoices for which TMT does not receive timely Notice of a Dispute, and shall pay all amounts due under such invoices in accordance with Section 12.

14. Limited Warranty.

(a) TMT WARRANTS ONLY TO CUSTOMER, AND TO NO OTHER PERSONS, THAT THE GOODS SHIPPED BY TMT TO

CUSTOMER IN ACCORDANCE WITH ANY ACCEPTED PURCHASE ORDER CONFORM AT TIME OF SHIPMENT TO THE DESCRIPTION IN THE PACKING SLIP OR OTHER DOCUMENT ACCOMPANYING SUCH GOODS. ONE OR MORE ITEMS CONSTITUTING A THIRD-PARTY PRODUCT MAY FROM TIME TO TIME CONSTITUTE GOODS, CONTAIN GOODS, BE CONTAINED IN GOODS, BE INCORPORATED INTO GOODS, BE ATTACHED TO GOODS, OR BE PACKAGED TOGETHER WITH GOODS. THE WARRANTY IN THIS SECTION 14(a) DOES NOT COVER OR EXTEND TO ANY THIRD-PARTY PRODUCT.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 14(a), TMT MAKES NO WARRANTY WHATSOEVER—WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE—WITH RESPECT TO ANY GOODS, INCLUDING ANY (1) WARRANTY OF MERCHANTABILITY; (2) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (3) WARRANTY OF TITLE; OR (4) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

(c) TMT MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT—WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE—INCLUDING ANY (1) WARRANTY OF MERCHANTABILITY; (2) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (3) WARRANTY OF TITLE; OR (4) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

(d) TMT shall not be liable for a breach of the warranty set forth in Section 14(a) unless: (1) Customer gives Notice of the defect, reasonably described, to TMT within five (5) days of the time when Customer discovers or reasonably could have discovered the defect; (2) TMT is given a reasonable opportunity after receiving Notice to examine such Goods; (3) Customer, if requested to do so by TMT, delivers such Goods at the expense of TMT to a location determined by TMT in its sole and exclusive discretion, and permits TMT to examine Goods at a location determined by TMT in its sole and exclusive

discretion; and (4) TMT reasonably verifies Customer's claim that Goods evidence a breach of the warranty set forth in Section 14(a).

(e) TMT shall not be liable for a breach of the warranty set forth in Section 14(a) with respect to any Goods if: (1) Customer makes any further use of such Goods after giving Notice under Section 14(d) or permits the use of such Goods by any other person; (2) the defect arises because Customer failed to follow TMT's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of Goods; or (3) Customer attempts to alter or repair Goods without the prior written consent of TMT.

(f) With respect to any Goods brought to the attention of TMT by Customer in compliance with Section 14(d), TMT shall, in its sole and exclusive discretion, either: (1) repair or replace such Goods (or the defective portion of such Goods); or (2) credit or refund any Price of such Goods at the pro rata contract rate, but only on the condition that if TMT so requests, Customer shall first return such Goods to TMT.

(g) THE REMEDIES SET FORTH IN SECTION 14(f) SHALL CONSTITUTE CUSTOMER'S EXCLUSIVE REMEDIES AND TMT'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 14(A).

15. Limitation of Liability.

(a) IN NO EVENT SHALL TMT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS—WHETHER OR NOT THE POSSIBILITY OF ANY SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER OR TMT, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) TO THE FULLEST EXTENT PERMITTED BY LAW, AND

NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, IN NO EVENT SHALL TMT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ANY PURCHASE ORDER, ACCEPTED PURCHASE ORDER, GOODS, SERVICES, OR DISPUTE, WHETHER ARISING OUT OF OR RELATED TO ANY BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE BY ANY PARTY), OR ANY OTHER CAUSE OR REASON, EXCEED THE LESSER OF (1) \$50,000; OR (2) TWO TIMES THE TOTAL OF THE AMOUNTS ACTUALLY PAID TO TMT FOR ANY GOODS SUBJECT TO A PURCHASE ORDER.

(c) In no event shall TMT be liable to Customer or any other person for any of the following with respect to any Goods at any time before, during, or after the application of any Services: (1) any selections, variations, or errors in tooling, patterns, specifications, drawings, or designs delivered by Customer to TMT; (2) any particular nature or level of structural, physical, or chemical composition or strength exhibited by such Goods; (3) any changes or alterations of such Goods as a result of any Services in ways that were, may, are, or will at any time be anticipated, unanticipated, desired, or not desired by Customer or any other persons; and (4) whether such Goods exhibit or may be prone in the future to any particular level of shrinkage, expansion, deformity, rupture, or any other kind of change, alteration, or damage—regardless of whether such change, alteration, or other type of damage occurred or is more likely to occur by reason of heat treating, quenching, straightening, cleaning, or by reason of any other operation or task, whether such operation or task is performed by TMT or any other person.

16. Insurance.

(a) At the time that Customer submits any Purchase Order and through the time of delivery of any Goods by TMT to Customer, and for a period of two (2) years after any such delivery of Goods by TMT to Customer, Customer shall, at its sole expense, maintain and carry one or more insurance policies (including but not limited to at least one general commercial liability policy) in full force and effect that are reasonable as to the type(s) and amount(s) of insurance coverage in light of the Goods involved in such Purchase Order, the intended use and potential liability for such Goods, and Customer's other reasonably anticipated insurance needs.

(b) All insurance policies that Customer must maintain and carry under Section 16(a) must be carried and maintained with one or more insurers that have a financial strength rating of not less than "A" in the most current edition of Best's Key Rating Guide, issued by A.M. Best Company, Inc., during all periods of time that Customer is required to maintain and carry insurance under Section 16(a). Upon TMT's request, Customer shall provide TMT with proof, in the form of copies of executed insurance policies with all applicable endorsements, of all insurance policies required by Section 16(a). Customer shall provide TMT with fifteen (15) days' advance Notice in the event of a cancellation or material change in any of Customer's insurance policies. Except where prohibited by law, Customer shall require any and all of Customer's insurer(s) to waive all rights of subrogation against any and all of TMT's insurers and TMT.

17. Indemnification.

(a) Customer and Customer's officers, directors, members, managers, partners, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnifying Party**") shall indemnify, hold harmless, and defend TMT and its officers, directors, members, managers, partners, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, that are incurred by Indemnified Party and awarded against Indemnified Party (collectively, "**Losses**"), arising out of any third-party claim alleging:

(1) any breach or non-fulfillment of any portion of these Terms by either Indemnifying Party or Indemnified Party;

(2) any negligent or more culpable act or omission by either Indemnifying Party or Indemnified Party in connection with any Purchase Order, Goods, or Services—including any reckless or willful misconduct;

(3) any bodily injury, death of any person, or damage to real or personal property caused by the negligent or more culpable acts or omissions by either Indemnifying Party or Indemnified Party in connection with any Purchase Order, Goods, or Services, including any reckless or willful misconduct; or

(4) any failure by either Indemnifying Party or Indemnified Party to comply with any Laws (including Laws concerning Intellectual Property Rights of any person or persons) in the performance of any obligations in connection with, arising from, or related in any way to any Purchase Order, Goods, or Services.

(b) Indemnifying Party's duty to defend applies immediately, regardless of whether Indemnified Party has paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any third-party claim.

(c) Payments by Indemnifying Party pursuant to this Section 17 in respect of any Losses are limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by Indemnified Party in respect of any such indemnity claim, less any related costs and expenses, including the aggregate cost of pursuing any related insurance claims and any related increases in insurance premiums or other charge-backs. Indemnified Party shall not have any obligation to seek to recover any insurance proceeds in connection with making a claim under this Section 17.

(d) With respect to any payment made pursuant to this Section 17 in respect of Losses, Indemnifying Party:

(1) may reduce it by an amount equal to any federal or state tax benefit actually realized as a result of such Losses by Indemnified Party; and

(2) must increase it by an amount equal to any federal or state tax imposed on the receipt of such indemnity payment.

(e) Indemnified Party shall give Indemnifying Party prompt Notice (“**Claim Notice**”) of any Losses or discovery of facts on which Indemnified Party intends to base a request for indemnification under this Section 17. Indemnified Party's failure to provide a Claim Notice to Indemnifying Party pursuant to this Section 17 does not relieve Indemnifying Party of any liability that Indemnifying Party may have to Indemnified Party. Each Claim Notice must contain a description of the third-party claim and the nature and amount of the related Losses (to the extent that the nature and amount of the Losses are known at the time). Indemnified Party shall furnish promptly to Indemnifying Party copies of all papers and official documents received in respect of any Losses.

(f) Indemnifying Party shall give prompt Notice to Indemnified Party of any proposed settlement of any third-party claim that is reasonably likely to give rise to an indemnification claim under Section 17(a). Indemnifying Party may not, without the prior written consent of Indemnified Party, settle or compromise any claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent:

(1) includes an unconditional release of Indemnified Party from all liability arising out of such claim;

(2) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of Indemnified Party; and

(3) does not contain any equitable order, judgment or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains or interferes with the business of Indemnified Party.

18. Confidential Information.

(a) All non-public, confidential, and/or proprietary information of TMT, including, but not limited to TMT's Intellectual Property Rights, that is disclosed by TMT to Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” is confidential, disclosed to Customer solely for the use of performing TMT's obligations under these Terms and any Accepted Purchase Order, and may not be disclosed to any other persons or copied unless authorized in advance by TMT in writing. Upon TMT's request, Customer shall promptly return any and all documents and other materials received from TMT. TMT shall be entitled to injunctive relief for any violation of this Section 18(a). This Section 18(a) does not apply to information that is: (1) in the public domain through no fault of Customer or parties related to Customer; (2) previously and rightfully known to Customer at the time of its initial disclosure by TMT to Customer; or (3) rightfully obtained by Customer on a non-confidential basis from a third party, but only if the discovery, possession, or disclosure of such information by such third party is not in breach or violation of these Terms, any obligation that such third party owes to TMT, or any Laws.

(b) TMT shall have sole and exclusive ownership of, right to, title to, interest in, and all other Intellectual Property Rights to any and all Developed Intellectual Property, regardless of whether the making, invention, development, creation, conception, or reduction to practice of such Developed Intellectual Property resulted or was derived in whole or in part from any kind of use, involvement, or reference to any Intellectual Property, confidential information, or any other information or property belonging to or owned by Customer or any other person. Customer shall not have (1) any license to make use of any Developed Intellectual Property; (2) any ownership, right, title, or interest in any Developed Intellectual Property; or (3) any other Intellectual Property Rights in any Developed Intellectual Property.

(c) For avoidance of doubt, Section 18(b) shall continue to apply in full force and effect regardless of (1) the monetary value of any Developed Intellectual Property; (2) the extent or timing with which TMT documents its Intellectual Property Rights in the Developed Intellectual Property—or whether TMT makes any effort at all to document its Intellectual Property Rights in the Developed Intellectual Property; and (3) the degree to which the making, invention, development, creation, conception, or reduction to practice of any Developed Intellectual Property may be attributed causally or otherwise to any cooperation or communication between Customer and TMT, or to any unilateral input, suggestions, or recommendations from Customer to TMT.

19. Compliance With Law. Customer shall comply with all applicable Laws. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that Customer requires, by Law or otherwise, to carry out its obligations under these Terms. Customer shall comply with all export and import Laws of all countries involved in the delivery of Goods under these Terms or any sale of Goods by Customer. Customer assumes all responsibility for shipments of Goods requiring any clearance from any Governmental Authority, whether by reason of export and import Laws, or by virtue of any other reason.

20. Termination. In addition to any remedies that may be provided under these Terms or by Law, TMT may, in its sole and exclusive discretion, terminate these Terms with respect to any Purchase Order, Accepted Purchase Order, Goods, or Services—and such termination shall have immediate effect either with or without any Notice to Customer,

if Customer: (1) fails to pay any amount when due under these Terms; (2) has not otherwise performed or complied with any of these Terms, in whole or in part; or (3) 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.

21. Waiver.

(a) No waiver of any portion of these Terms by TMT is effective unless such waiver is in writing, specifically identifies in such writing the portion of these Terms that is to be impacted by the waiver, identifies in such writing the purpose of the waiver and the occasion to which it is intended to apply, and is signed by an authorized officer of TMT.

(b) Any waiver authorized by TMT with respect to one occasion is effective only on that occasion and only for the purpose stated in the writing authorizing such waiver, and does not operate as a waiver on any future occasion

(c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition that belongs to TMT and arises from these Terms, from Law, or by virtue of any other reason:

(i) any failure or delay by TMT in exercising any right, remedy, power or privilege, or in enforcing any condition under these Terms; or

(ii) any act, omission, or course of dealing between the Parties.

(d) No single or partial exercise by TMT of any right, remedy, power, or privilege under these Terms precludes any further or other exercise of the same or any other right, remedy, power, or privilege.

22. Dispute Resolution and Arbitration.

(a) In the event of a Dispute, the aggrieved Party shall deliver Notice of the Dispute to the other Party. Each Party shall attempt to resolve any Dispute in good faith. If an unresolved Dispute continues to exist sixty (60) days after delivery of the applicable Notice of such Dispute, either Party may move to begin arbitration in accordance with this Section 22.

(b) **Any Dispute shall be settled by arbitration in Clackamas County, Oregon, shall**

be administered by Arbitration Service of Portland, Inc., shall be conducted in accordance with the then-current rules of the Arbitration Service of Portland, Inc., and judgment on the decision and/or award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(c) In the event that filing a claim or obtaining a final and binding decision from the Arbitration Service of Portland, Inc. in accordance with Section 22(b) is impossible for any reason, any Dispute shall be settled by arbitration administered by the American Arbitration Association in accordance with its then-current Commercial Arbitration Rules or other applicable rules approved as an alternative to the Commercial Arbitration Rules by the American Arbitration Association, and judgment on the decision and/or award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(d) If the amount or monetary value at issue in the Dispute is \$10,000 or less, and if neither Party is seeking injunctive or other equitable relief:

(i) the Dispute will be settled before a single arbitrator;

(ii) if the Parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the Parties; and

(iii) if the Parties do not agree on an arbitrator, each Party will designate an arbitrator, and the arbitration will be held before a single arbitrator that is selected by the designated arbitrators.

(e) If the amount or monetary value at issue in the Dispute exceeds \$10,000, or if a Party is seeking injunctive or other equitable relief:

(i) the Dispute will be settled before three arbitrators;

(ii) if the Parties agree on the arbitrators, the arbitration will be held before the arbitrators selected by the Parties; and

(iii) if the Parties do not agree on the arbitrators, each Party will designate an arbitrator and the arbitration will be held before the two designated arbitrators plus a third arbitrator selected by the designated arbitrators.

(f) Each arbitrator will be an attorney licensed to practice law in the State of Oregon, in good standing with the Oregon State Bar, and knowledgeable in the area of business law.

(g) The arbitration will be conducted in accordance with the procedures set forth in ORS 36.600 through ORS 36.740. The arbitration will be conducted in accordance with the following provisions:

(i) discovery proceedings of the type provided by the Federal Rules of Civil Procedure will be permitted in advance of and during recesses of the arbitration hearing;

(ii) the arbitrator(s) will resolve any disputes relating to discovery issues;

(iii) the arbitrator(s) will have discretion to order a prehearing exchange of information by the parties and an exchange of summaries of testimony of proposed witnesses;

(iv) the arbitrator(s) will have authority to issue interim relief and provisional remedies;

(v) the arbitrator(s) will have authority to award any remedy that a court in the State of Oregon could order or grant, including but not limited to injunctive relief and other equitable relief and the imposition of sanctions for abuse or frustration of the arbitration process, except that the arbitrator(s) will not have authority to award punitive damages or any other amount for the purpose of imposing a penalty;

(vi) the award will be in writing, be signed by a majority of the arbitrators, and include a statement regarding the disposition of each claim;

(vii) the parties will keep all information relating to the arbitration and the disposition of each claim confidential to the fullest extent permitted by applicable law; and

(viii) the resolution of any Dispute as determined by a majority of the arbitrators will be binding on the Parties.

(h) In the event of any conflict between (1) either Section 22(b) or Section 22(c); and (2) any provision of Section 22(d), Section 22(e), or Section 22(g), Section 22(b) or Section 22(c), as applicable, shall prevail and govern to the exclusion of any conflicting provision.

(i) A Party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending the resolution of any Dispute by the arbitrator(s). Any such action, suit, or proceeding—or any action, suit, or proceeding to confirm, vacate, modify, or correct the award of the arbitrator(s)—shall be litigated in courts located in Clackamas County, Oregon.

(j) For the purposes set forth in this Section 22, each Party consents and submits to the jurisdiction of any local, state, or federal court located in Clackamas County, Oregon.

23. Force Majeure. TMT shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached these Terms or any Accepted Purchase Order, for any failure or delay whenever and to the extent that such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of TMT—including but not limited to such acts or circumstances as acts of God; flood; fire; earthquake; explosion; governmental actions; war; invasion or hostilities (whether war is declared or not); terrorist threats or terrorist acts; riots or other civil unrest; national emergency; revolution; insurrection; epidemic; lock-outs; strikes or other labor disputes (whether or not relating to either Party's workforce); restraints or delays affecting shipping carriers; inability or delay in obtaining supplies of adequate or suitable materials; breakdown of materials or telecommunications; or power outage.

24. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of TMT. Any purported assignment of rights or delegation of obligations in violation of this Section 24 is null and void. No assignment or delegation relieves Customer of any of Customer's obligations to TMT under these Terms.

25. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in these Terms 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.

26. No Third-Party Beneficiaries. These Terms are for the sole benefit of the Parties and their respective successors and permitted assigns and nothing in these Terms, 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.

27. Governing Law. All matters arising out of or relating to these Terms shall be governed by and construed in accordance with the internal laws of the State of Oregon, without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would result in the application of the laws of any jurisdiction other than those of the State of Oregon.

28. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to a Purchase Order, Accepted Purchase Order, Goods, Services, or any other subject matter of these Terms, and permitted to be instituted in a court of competent jurisdiction by these Terms, shall be instituted in the federal courts of the United States of America or the courts of the State of Oregon, and in each case located in the State of Oregon and the County of Clackamas, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

29. Notices. Each Notice must be in writing and addressed to the receiving Party at such Party's address, as may be set forth below or designated from time to time by any Party as its address for receipt of Notice. All Notices must be delivered by personal delivery; by a nationally recognized overnight courier; or by certified or registered mail (in each case, with return receipt requested, and postage prepaid). Notices to TMT may be delivered to the following address: 19830 SW Teton Ave., Tualatin, Oregon 97062, USA. A Notice is effective only upon delivery to the receiving Party, and only if the Party giving Notice has complied with the requirements of this Section 29.

30. Severability. If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. In the event that a term or provision of these Terms is partially invalid, partially illegal, or partially unenforceable in any jurisdiction, then such term or provision shall remain effective and valid in such jurisdiction to the maximum extent possible.

31. Captions and Headings. The captions and headings of the sections and paragraphs of these

Terms are intended solely for convenience, and no part of these Terms shall be construed by reference to the caption or heading of any section or paragraph.

32. Survival. Provisions of these Terms which by their nature should apply beyond the termination of these Terms with respect to any particular Customer, Purchase Order, Accepted Purchase Order, Goods, or Services will remain in force after such termination, including but not limited to the following Sections: 1, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 21, 22, 27, and 28.