

**HARBISONWALKER INTERNATIONAL, LTD.**  
**STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES**

**1. Agreement.** These terms and conditions for the sale of goods and services (“**Terms**”) are the only terms that govern the sale of the goods (“**Goods**”) and services (“**Services**”) by HarbisonWalker International, Ltd. (“**Seller**”) to you, the buyer, purchaser, or transferee of the Goods and/or Services (“**Buyer**”). Seller’s acceptance or confirmation of any order of Buyer is conditioned on Buyer’s assent to these Terms. Buyer must notify Seller immediately if it objects to or rejects these Terms; prior objection or rejection is ineffective. Buyer accepts these terms by authorizing or acquiescing in Seller’s delivery of Goods or commencement of performing the Services. Seller hereby expressly objects to and rejects any and all additional or different terms proposed by Buyer, irrespective of when delivered or where located, and no such different or additional terms shall form part of this contract or be binding on Seller.

**2. Prices and Payments.** Buyer must confirm Seller’s current prices before placing any order. All purchase orders must reflect Seller’s then-current pricing or Seller may refuse such order. Buyer must pay Seller within thirty (30) days from the date of Seller’s invoice, unless a different payment term is set forth in the invoice. Seller may at any time require Buyer to prepay or pay cash on delivery in connection with any order. Seller may, without liability to Buyer, suspend or withhold delivery or performance if Seller has reason to believe that Buyer’s credit or ability to pay is impaired and Buyer fails to provide adequate assurance to Seller’s satisfaction. All payments shall be made in U.S. Dollars. Payment shall be delivered as specified in Seller’s invoice or EDI payment instructions. Buyer shall pay interest on all late payments at the lesser rate of 3.0% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, collection agency fees, dispute resolution costs, court costs plus reasonable legal fees incurred by Seller in bringing any legal action. Seller shall have the right to set off against any monies due Seller hereunder any obligations of Seller or its affiliates to Buyer. Seller shall have, in addition, all other remedies available to Seller by law, equity or this contract.

**3. Taxes.** All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. To the extent legally permissible, all present and future taxes imposed by any federal, state or local authority of any country which Seller may be required to pay or collect, upon or with reference to the sale, purchase, transportation, delivery, storage, use or consumption of the goods or services, including taxes upon or measured by the receipts therefrom shall be for the account of Buyer. Purchases are subject to state or local use tax, unless expressly exempt from taxation. Buyer assumes responsibility for correctly assessing and remitting any use tax due to the proper

jurisdiction(s). Buyer shall reimburse Seller for any taxes paid or withheld on Buyer’s behalf, and Buyer shall hold Seller harmless for any and all costs, penalties or interest that may be imposed relative to Buyer’s taxes by any government authority.

**4. Shipping.** All shipments are made EXW (Incoterms 2010) Seller’s facility. All shipping dates are approximate. Seller shall use commercially reasonable efforts to meet Buyer’s requested delivery date, but in no event shall Seller be responsible for any delivery delays, no matter the cause. Each shipment is a separate sale. Partial shipments and shipments in installments are permitted. Seller will use commercially reasonable efforts to comply with Buyer’s requests regarding transportation mode, but Seller reserves the right to make alternate transportation arrangements, even if at a higher cost to Buyer, if the transportation specified by Buyer is deemed by Seller to be unavailable or unsatisfactory. Buyer shall be the importer and exporter of record for all international shipments.

**5. Inspection.** Buyer shall conduct a timely inspection of the Goods or Services upon receipt, but in no event more than ten (10) days after receipt. Failure of Buyer to notify Seller of any defect or nonconformity within ten (10) days of receipt shall be deemed an acceptance of the Goods and Services and waiver of any claim that the Goods or Services are defective or nonconforming. Buyer’s use of the Goods or Services in connection with its operations shall be deemed an acceptance of the Goods or Services and a waiver of all claims of defect or nonconformity. Rejection shall be made in accordance with these Terms and within the inspection or non-conforming good periods set herein, or Buyer’s rejection shall be deemed waived. There shall be no revocation of acceptance. Buyer’s inspection or failure to inspect shall not delay payment.

**6. Variation.** Except in the particulars specified by Buyer and expressly agreed to in a writing signed by Seller, the Goods and Services furnished hereunder shall be provided in accordance with Seller’s standard practices. All Goods, however, including those produced to meet an exact specification, shall be subject to Seller’s variations consistent with industry standard in respect to: (i) dimension, weight, straightness, section, composition and mechanical and/or physical properties, (ii) normal variations in surface and internal conditions and in quality, and (iii) deviations from tolerances and variations consistent with practical testing and inspection methods.

**7. Over Shipment.** Over shipment shall be allowable on all shipments of sizes and shapes that are not carried in stock. Seller shall determine, in its sole discretion, what constitutes stock. In the event of an over shipment, Seller withholds the right to invoice Buyer for the same.

**8. Return Policy.** Upon receipt of written consent from Seller, Buyer may cancel this order and return unused, undamaged Goods. Seller, in its sole discretion, may withhold consent for any reason, including, without limitation,

resalability, shelf-life, returning less than full pallet, or any other reason. All returns shall be subject to a restocking fee of twenty percent (20%) of the purchase price of the entire order. Buyer may request Seller to manufacture products outside Seller's stock items in accordance with Buyer's strict specifications ("**Custom Products**"). Buyer expressly agrees that Custom Products are not returnable and are excluded from Seller's Return Policy. Seller shall not be liable for any requested Custom Products manufactured and remained unused by Buyer.

**9. Consignment.** In the event Buyer chooses to purchase Goods on consignment ("**Consigned Goods**"), Buyer agrees that UCC Article 9 shall govern the consignment transaction. Seller shall reserve title to the Consigned Goods, and Consignee shall assume the risk of loss, theft or damage to the Consigned Goods upon delivery of the Consigned Goods at Buyer's facility. Buyer hereby grants to Seller as a security for the payment by Buyer of the purchase price of the Consigned Goods purchased, as and when due, a purchase money security interest in all of the Buyer's right, title and interest in and to the Consigned Goods to be purchased by Buyer and all documents of title covering such Consigned Goods. Buyer shall not place any liens or encumbrances upon the Consigned Goods, and upon Seller's demand, the Consigned Goods shall be returned to Seller immediately.

**10. Title and Risk of Loss.** Risk of loss shall pass to the Buyer upon tender of Goods to the carrier or performance of the Services. Any charges at the delivery point for spotting, switching, handling, storage and other accessorial services, shall be borne by Buyer. Seller shall have the right to assess a storage and handling charge for goods left in Seller's possession after notification to Buyer that the goods are available to ship. Title to the Goods and Services shall pass to Buyer upon Seller's receipt of full payment for the goods.

**11. Limited Warranty; Disclaimers.**

a. Seller warrants that (i) the Goods will be furnished in accordance with the written specifications of Seller or any written specifications of Buyer that Seller approves in writing, and at the time of delivery will be free from defects; and (ii) the Services will be performed in a workmanlike manner. Claims for damaged or non-conforming Goods and Services must be made, in writing, promptly, and in no event later than ten (10) days following delivery of the Goods to or performance of the Services for Buyer, or all such claims shall be deemed waived. Buyer shall set aside, protect, and hold any claimed nonconforming or defective Goods or Services without further processing until Seller has an opportunity to inspect and advise of the disposition, if any, to be made of such Goods or Services. In no event shall any Goods be returned, reworked, or scrapped by Buyer without the express written authorization of Seller.

b. Any technical advice provided by Seller with respect to the use of Goods or Services sold hereunder shall be for informational purposes only, and Buyer acknowledges and agrees that Seller makes no representation or warranty, nor

assumes any obligation or liability for any such advice, which Buyer accepts at its sole risk.

c. Notwithstanding the foregoing, no representation or warranty whatsoever is provided with respect to any Goods sold on an "as is" basis. OTHER THAN THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 11, SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS AND SERVICES. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL STATEMENT OF ANY SELLER PERSONNEL, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, SHALL OPERATE TO MODIFY THE LIMITED WARRANTIES AND DISCLAIMER SET FORTH HEREIN. SELLER MAKES NO WARRANTY REGARDING THIRD PARTY PRODUCTS, WHICH ARE PROVIDED "AS IS."

**12. Limited Remedies; Limitation of Liability.**

a. Seller will replace, at the delivery point specified herein, any Goods furnished hereunder that are confirmed by Seller to be defective or otherwise fail to conform to Seller's warranty or this Agreement, or, at Seller's option, repay the price paid for such goods plus any transportation charges paid by Buyer in addition to such price less any scrap value realized by Buyer for such goods. Seller shall not be liable for breach of warranty set forth herein if the defect arises because Buyer failed to follow Seller's instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Services. With respect to any defect in the Services, Seller, at its option and upon proper notice from Buyer, shall re-perform the Services at no cost to Buyer or refund the monies paid for such Services. THESE REMEDIES ARE BUYER'S SOLE REMEDIES WITH RESPECT TO ANY DEFECT OR NONCONFORMITY IN THE GOODS OR SERVICES.

b. Seller's maximum liability for any breach of this Agreement or any defective Goods or Services shall be limited to the difference between the delivered price of the Goods covered hereby and the market price of such Goods at Buyer's destination at the time of such breach, and in no event shall Seller's liability exceed the price of the Goods or Services at issue.

c. IN NO EVENT SHALL SELLER BE LIABLE FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PROFIT, DELAY, OR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER ARISING FROM CONTRACT, BREACH OF CONTRACT, TORT, SELLER'S NEGLIGENCE, STRICT LIABILITY, OR ANY EXPRESS OR IMPLIED WARRANTY. NO CLAIMS OF ANY NATURE, WHETHER BASED ON CONTRACT OR OTHERWISE, MAY BE BROUGHT AGAINST THE SELLER OR ANY OF ITS AFFILIATES MORE THAN

TWELVE (12) MONTHS AFTER THE DELIVERY OF THE GOODS OR SERVICES TO BUYER.

**13. Termination.** In addition to any other remedies available to Seller under these Terms, Seller may terminate any order of Buyer with immediate effect, if Buyer: (i) fails to perform its obligations under or otherwise breaches any provisions of these Terms or any other contract between the Buyer and Seller or any of Seller's affiliates; (ii) ceases to carry on its business substantially as such business is conducted on the date of the contract between the Buyer and Seller and such change in circumstances modifies Seller's obligations or impairs either party's ability to discharge its obligations under this contract; (iii) becomes insolvent or institutes or suffers the institution of bankruptcy, reorganization, receivership, or assignment for the benefit of creditors; (iv) generally becomes unable to pay its debts as they become due; (v) has entered into any term, condition or provision of this or any other contract between the Buyer and Seller that becomes invalid or illegal under any applicable law, rule or regulation; or (vi) is subject to an event of force majeure listed in Section 13 of this contract and it continues for a period of more than thirty (30) days. Buyer may not cancel or modify any order once placed with Seller.

**14. Intellectual Property.**

a. All right, title, and interest in and to all intellectual property rights in the Goods and Services are and shall remain the exclusive property of Seller. No Services are performed as works made for hire. Seller extends to Buyer only such rights in and to the Goods and Services as are minimally necessary to enjoy the Goods and Services as delivered by Seller.

b. Buyer shall indemnify Seller with respect to any claim that the Goods or Services infringe the intellectual property rights of a third party to the extent any such claim arises out of or relates to Seller's compliance with designs, instructions, or specifications furnished by Buyer.

**15. Confidential Information.** All non-public, confidential or proprietary information of Seller including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, 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" in connection with these Terms is confidential, solely for the purpose of supplying Goods or Services and may not be disclosed or copied unless authorized in advance by Seller writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. In addition to all other remedies available at law, Seller may seek equitable relief including, including injunctive relief, against Buyer and its representatives to prevent the breach or threatened breach of this provision and to secure its enforcement. Seller grants Buyer no right or license in or to its confidential or proprietary information except to the extent minimally necessary to enjoy the Goods or Services, and only for such purpose.

**16. Force Majeure.** Except for the payment of money, neither party shall be liable or responsible to the other, nor be deemed to have defaulted under or breached any obligation, for any failure or delay in fulfilling or performing, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control, including, without limitation to: acts of God, flood, fire, earthquake or explosion; war, invasion, hostilities (whether declared or not), terrorist threats or acts, riot or other civil unrest; government order or law; actions, embargoes or blockades in effect on or after the date of this contract; action by any governmental authority; national or regional emergency; strikes, labor stoppages or slowdowns or other industrial disturbances; supply shortages; and shortage of adequate power or transportation facilities (each, a "force majeure event"). In addition, if due to a force majeure event or any other cause, Seller is unable to produce sufficient goods to meet all demands from Buyers and internal uses, Seller shall have the right to allocate production among its customers and plants in any manner which Seller may determine in its sole discretion, without liability to Buyer whatsoever.

**17. Export Control.**

a. Any sale made pursuant to these Terms shall at all times be in strict conformity with all applicable export control laws and regulations, and Buyer represents and warrants that it will comply at all times with all applicable export control regulations. Buyer represents and warrants that it will not make any disposition, by way of trans-shipment, export, re-export, diversion, or otherwise, of the Goods provided by Seller, except as such laws and regulations may expressly permit, with Buyer bearing full responsibility for obtaining any required export licenses or other permits, and that no such disposition or transfer will be made other than to the ultimate country of destination specified in connection with these Terms. Buyer will furnish to Seller, upon request, proof that the Goods have been entered into, and will remain in, the specified destination country. Buyer further represents and warrants that it will not export, re-export, transfer (in-country), or supply any goods or Seller information to any end user or for any end use requiring a specific export license under the U.S. Export Administration Regulations or any other applicable export control regulation.

b. Buyer represents and warrants that, with respect to its obligations under these Terms and any other agreement with Seller, it is currently in compliance with, and shall remain in compliance with, the laws, regulations and Executive Orders administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury and any other applicable economic sanctions, which prohibit, among other things, engaging in transactions with, and providing services to, certain countries, territories, entities, and individuals. Buyer represents and warrants that neither Buyer nor any person having a beneficial interest in Buyer is (i) a person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC (an "OFAC Listed Person") or (ii) a department, agency, or instrumentality of, or is otherwise directly or indirectly controlled by or acting on behalf of, any OFAC Listed Person or the government of a

country subject to comprehensive U.S. economic sanctions administered by OFAC, currently Iran, Sudan, Cuba, Burma, Syria and North Korea (each OFAC Listed Person and each other entity and country described in clause (ii), a “Blocked Person”).

c. Buyer further represents and warrants that none of the Goods or Services that it is receiving from Seller will involve, require interaction with, concern, or relate to, in whole or in part, any Blocked Person or their assets or products.

d. Buyer hereby acknowledges and agrees that Buyer’s breach of any of the terms of this Section 17 at any time shall be a material default of this Agreement.

e. Buyer hereby agrees to indemnify, defend, and hold harmless Seller and its officers, directors, and employees from and against any and all claims, demands, damages, costs, penalties, and fines arising in connection with any alleged breach by Buyer or its agents of this representation and warranty. Seller may reject, suspend, or cancel any transaction to a Blocked Person without penalty or payment for the rejected, suspended, or cancelled goods or services, and/or cancel or terminated this contract, or any other applicable agreement with seller, in whole or in part, if it has a good faith basis for believing that Buyer or its agent has violated or intends to violate the above representation and warranty. Buyer will pay all penalties and damages incurred as a result of its breach of the terms of this Section.

#### **18. Anti-Corruption Compliance.**

a. Buyer represents and warrants to Seller that Buyer and its agents and employees are in compliance and shall comply with all applicable anti-bribery and anti-corruption laws, including the U.S. Foreign Corrupt Practices Act. Buyer and its agents and employees, in connection herewith or in connection with any other business transaction related to Seller, have not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value, nor will Buyer or its agents and employees, directly or indirectly, offer, pay, promise, or authorize the giving of money or anything of value to any government official for the purpose of influencing any act or decision of such government official. Seller may terminate performance and cancel any order immediately, without liability to Buyer, if Seller has a reasonable basis to believe that Buyer has violated this provision.

b. Seller may terminate performance immediately and without liability to Buyer by written notice for cause in the event that (i) Seller forms a reasonable, good faith belief that Buyer or one of its directors, officers, employees, subcontractors, agents, representatives, vendors, or any other third parties that it engages in connection with the Goods or Services has engaged in conduct in violation of these Terms or applicable anti-corruption laws; or (ii) the continuation of providing Goods or Services would violate any applicable anti-corruption laws. In the event of such termination, all existing contractual obligations (including further compensation) may be declared null and void by Seller, and all offers outstanding at the time of termination shall be deemed rescinded.

**19. Choice of Law; Jurisdiction.** This Agreement and all acts or omissions in connection with this Agreement shall be governed by and construed under the laws of England, without regard to its choice of law principles. Any claim, controversy,

or dispute, whether arising from the Agreement itself or arising from alleged extra contractual facts prior to, during, or subsequent to the agreement, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of the Agreement, shall be resolved solely and exclusively in the courts situated in London, England, and Buyer and Seller expressly consent and submit to the jurisdiction of such courts. The United Nations Convention for Contracts for the International Sale of Goods does not apply to these Terms or any provision by Seller of Goods or Services to Buyer

**20. Entire Agreement.** These Terms constitute the complete, exclusive and fully integrated agreement between the Buyer and Seller with respect to the Goods and Services, and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the Goods and Services. No terms or conditions (whether consistent or inconsistent) other than those stated herein and no agreement or understanding in any way purporting to modify these terms and conditions of sale, including without limitation a course of dealing, course of performance, or trade usage, shall be binding on Seller unless expressly agreed upon in writing by authorized representatives of both Buyer and Seller. In the event of a conflict between these terms and conditions and any purchase order (or other document expressly made a part of this contract) signed by both parties, these terms and conditions shall prevail. Buyer’s placement of an order or release for, or taking delivery of, any product of Seller that is the subject of this contract shall constitute acceptance of the Terms. Seller hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer’s purchase orders, production releases or shipping release forms, or related correspondence or any other documents including emails. Catalogs, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof.

**21. Construction.** No provision of these Terms may be construed against the Seller as the drafting party. The English language version of this document will control in the event of any disagreement over any translation.

**22. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Seller. Any purported assignment or delegation in violation of the foregoing shall be void.

**23. Sourcing.** Seller reserves the right to source all or a portion of the Goods or Services from third parties. Buyer acknowledges and agrees that Seller may share with any of its third parties sources any drawings, schematics, plans, or other information necessary to provide the Goods or Services to Buyer. Seller shall have no responsibility for meeting Buyer’s country-of-origin product content requirements (if any) unless Seller is apprised in writing of such requirement at the time Buyer places its order with Seller.

**24. Waiver.** Waiver by Seller of any breach of these provisions shall not be construed as a waiver of any other breach.

**25. Third Party Beneficiaries.** Other than rights of Seller's affiliates under this contract, no third parties will have any rights under this contract.

**26. 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.

**27. 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 their purchase orders or invoices. All Notices shall be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, costs prepaid and proof of delivery required). 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 set forth in this Section.

**28. 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.

**29. 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 including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Choice of Law, and Survival.

**30. Amendment and Modification.** This Agreement 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.

**31. Miscellaneous.** The parties expressly acknowledge and agree that Seller will send a sales representative to Buyer's site to only observe the installation of the product at Buyer's site (the "**Observation**"). The parties expressly agree that Seller shall not be held liable for any and all claims, losses, damages, before, during or after the Observation period relative to the installation Services, including, without limitation, installation of the Goods or product, performance of any other Service, and any Goods or product failure due to installation. The parties expressly agree that this clause shall survive the termination of this Agreement, and it shall not be waived by either party without the express written consent of the other. Buyer shall indemnify, defend, and hold harmless Seller from any and all direct or third party disputes, losses, claims, and damages, including, without limitation, any and all attorneys' fees, arising out or pertaining to the installation of the Goods or

product, performance of any other Services, and any Goods or product failure due to installation thereof.