

HARBISONWALKER INTERNATIONAL, CORP.
STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. **Agreement.** These standard terms and conditions for the purchase of goods and services (“**Terms**”) are the sole and exclusive terms that govern the purchase of goods (“**Goods**”) and services (“**Services**”) by HarbisonWalker International, Corp. (“**Buyer**”) from you, the seller, supplier, or transferor of such Goods and/or Services (“**Seller**”). Buyer’s offer to purchase Goods and Services is limited to acceptance of these Terms and no other terms or conditions. Buyer objects to and rejects any and all additional or different terms proposed by Seller, irrespective of when delivered or where located, and no such different or additional terms shall form part of this contract or be binding on Buyer. These Terms govern all purchase orders (“**Purchase Order**”) issued by Buyer to Seller. These Terms and any Purchase Order(s) issued by Buyer to Seller comprise the entire agreement (the “**Agreement**”) between Buyer and Seller relating to the Goods and Services, and supersede all prior or contemporaneous understandings, agreements, negotiations, and communications, both written and oral. Seller manifests its assent and agreement to the Agreement by acknowledging Buyer’s Purchase Order, shipping the Goods, or commencing performance of the Services, whichever occurs first.

2. **Delivery of Goods and Performance of Services.**

a. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order (the “**Delivery Date**”). If no Delivery Date is specified, Seller shall deliver the Goods within thirty (30) days of Seller’s receipt of the Purchase Order. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may cancel the Purchase Order and/or terminate this Agreement immediately, without liability to Seller, and shall have available to it all rights and remedies available at law, including without limitation under the Uniform Commercial Code. Buyer has the right to return or store any Goods delivered prior to the Delivery Date, at Seller’s expense. If returned, Seller shall redeliver such Goods on the Delivery Date.

b. Seller shall ship all Goods DDP (Incoterms 2010) Buyer’s location stated in the Purchase Order, during normal business hours unless otherwise instructed by Buyer. Buyer’s Purchase Order number must appear on all shipping documents, shipping labels, bills of lading (if applicable), invoices, correspondence and any other documents pertaining to the Purchase Order. Seller shall provide Buyer with shipping documentation showing the Purchase Order number, the quantity of Goods in shipment, and the number of cartons or containers in shipment.

c. Seller shall properly pack, load and ship all goods according to Buyer’s instructions or, if there are no instructions, according to highest industry standards, at all times in full compliance with all applicable laws and regulations. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s risk of loss and expense. Seller bears all risk and loss arising from defects or delays in shipment arising from any actual or claimed infestation of or defects in containers or packing material.

d. Seller shall provide all Services to Buyer as described and in accordance with any schedule or statement of work delivered in connection with a Purchase Order and in accordance with this Agreement.

e. Seller acknowledges that time is of the essence with respect to Seller’s obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

3. **Quantity.** Buyer shall not be required to make payment for Goods delivered to Buyer that are in excess of quantities specified in Buyer’s Purchase Order or Change Order (as defined herein). If Seller delivers more than the quantity of Goods ordered, Buyer may reject all

or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased quantity, the Price for the Goods shall not be adjusted.

4. **Title and Risk of Loss.** Title and risk of loss passes to Buyer: for Goods, after unloading the Goods at Buyer’s location stated in the Purchase Order; for Services, upon Seller’s completion and Buyer’s acceptance thereof.

5. **Inspection and Rejection of Nonconforming Goods and Services.** Notwithstanding payment, passage of title or prior inspection, all items are subject to final acceptance or rejection by Buyer. Buyer, at its sole option, may inspect all or a sample of the Goods and Services, and may reject all or any portion of the Goods or Services if it determines from such inspection that the Goods or Services are nonconforming or defective. If Buyer rejects any portion of the Goods or Services, Buyer has the right to: (a) rescind this Agreement in its entirety; (b) accept the Goods or Services at a reduced price; or (c) reject the Goods or Services and require replacement of the rejected Goods or Services. If Buyer requires replacement of the Goods or Services, Seller shall, at its expense, promptly replace the nonconforming or defective Goods or Services 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 or Services. If Seller fails to timely deliver replacement Goods or Services, Buyer may replace them with goods or services from a third party and charge Seller the cost thereof and terminate this Agreement. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

6. **Price.** The price of the Goods and Services is the price stated in the Purchase Order (the “**Price**”). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the delivery location, insurance, customs duties, labor, materials, equipment, components, fees, costs, 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 Buyer.

7. **Payment Terms.**

a. Seller shall issue to Buyer an invoice: for Goods, at the time Seller ships the Goods; for Services, at the completion of the Services unless otherwise stated in the Purchase Order. Buyer shall pay all properly invoiced amounts within seventy-five (75) days after Buyer’s receipt of both the invoice and the Goods or Services, except for any amounts disputed by Buyer in good faith. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to seller under this Agreement.

b. If Buyer disputes the amount of any invoice or any part thereof, Buyer will pay all undisputed amounts, and the parties will negotiate in good faith to resolve the dispute. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

8. **Most Favored Customer.** Seller represents and warrants that the price for the Goods and Services is the lowest price charged by Seller to any of its external buyers of similar Goods. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods and Services under this Agreement. If Seller fails to meet the lower price, Buyer, at its option, may discharge its liability under any invoice by paying such lower amount for Goods or Services, or terminate this Agreement without liability.

9. Seller's Additional Obligations Regarding Services.

Seller 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 Buyer respecting health, safety, and environment and building, facility and data security;

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 Seller in providing the Services in such form as Buyer shall approve, permitting Buyer during the Agreement and for three years thereafter to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;

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

e. require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement;

f. ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified, 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, suitable for the purposes for which it is used, and fully compliant with all applicable laws, rules, and regulations; and

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

10. Change Orders. Buyer reserves the right to modify the Purchase Order with respect to quantities, delivery schedules and/or specifications by issuing one or more order changes (each a "**Change Order**") to Seller. If Seller's costs are reduced because of changes, Seller shall reduce the Price to reflect all such quantifiable cost savings, whether direct or indirect. If Seller's costs are increased because of changes, Seller shall within ten (10) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. If Seller does not submit a firm cost proposal within ten (10) days of the receipt of the Change Order, then Seller shall be deemed to waive any claim for a price increase due to the changes and shall perform the changes without any adjustment in Price.

11. Warranties.

a. Seller warrants to Buyer that for a period of twenty-four (24) months from the Delivery Date, 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 Buyer; (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 Buyer.

b. Seller warrants to Buyer that (i) it shall perform the Services using personnel of required skill, experience and qualifications, 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 (ii) the Services shall be free from defects in workmanship for a period of twenty-four (24) months from Seller's completion and Buyer's acceptance thereof.

c. The warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. If any of the foregoing warranties are breached, Buyer may, at its election and in addition to any rights or remedies it may have, (i) return Goods to Seller at Seller's risk and expense; (ii) require Seller, at Seller's expense, to promptly replace or correct the Goods or Services; (iii) require return of any amounts paid for the Goods or Services, including any costs Buyer incurred in connection therewith; (iv) acquire replacement Goods or Services at Seller's expense; (v) accept or retain non-conforming Goods or Services and equitably reduce the Price; and/or (vi) require Seller to re-perform the Services at no cost to Buyer. Such remedies are not exclusive, and Buyer hereby reserves all of its rights and remedies under applicable law.

12. Indemnification. Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent company, subsidiaries, affiliates, successors or assigns and respective directors, officers shareholders and employees from and against any and all claims, actions, damages or causes of action at law in in equity, together with any and all losses, costs, penalties, fines, interest and expenses and reasonable attorney and professional fees arising in connection therewith or related thereto (i) that are asserted by any party for damage to property, bodily injuries, diseases or death (including any worker's compensation claims) arising or in any manner relating to the Goods or Services (ii) that relate to or arise out of any claim asserted through or under Seller by Seller's subcontractors, material men and suppliers (including mechanic's lien claims) (iii) that relate to any breach by Seller of any of the warranties, covenants, terms or conditions of this Agreement, or (iv) that relate to any act or omission of Seller or any of its personnel, including, but not limited to, Seller's negligence, willful misconduct or breach of the Agreement. Seller shall not enter into any settlement without Buyer's prior written consent.

13. Limitation of Liability. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS OR LOST REVENUE CLAIMS, ARISING OUT OF OR RELATING TO THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH DAMAGES ARE FORESEEABLE, BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THE LEGAL THEORY UNDER WHICH SUCH CLAIM IS MADE.

14. Insurance. During the term of this Agreement Seller shall, at its own expense, maintain and carry insurance in full force and effect, with financially sound and reputable insurers with no less than an A-rating, the following types and amounts of occurrence-based insurance: commercial general liability (including product liability, completed operations, contractual liability and advertising injury) in an amount no less than \$1 million per occurrence, \$3 million aggregate; worker's compensation in statutorily required amounts; automobile liability in an amount no less than \$1 million per occurrence, \$3 million aggregate; and umbrella insurance over the commercial general liability and automobile insurance in an amount not less than \$5 million. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance required by this section, and such certificate of insurance shall name Buyer and its affiliates as additional insureds, state that it is primary over any insurance of Buyer, and waive any right of subrogation against Buyer, its affiliates and insurers.

15. Compliance with Laws.

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

b. Seller represents and warrants to Buyer that Seller 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. Seller and its agents and employees, in connection with this Agreement or in connection with any other business transaction related to Buyer, have not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value, nor will Seller 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. Buyer may terminate this Agreement and cancel any Purchase Order immediately, without liability to Seller, if Buyer has a reasonable basis to believe that Seller has violated this provision.

c. To the extent Buyer is making any purchase in connection with any government contract, Seller acknowledges and agrees that any contract provision required under the Federal Acquisition Regulations or other applicable regulations to be incorporated in any subcontract are so incorporated by this reference. Without limiting the generality of the foregoing, to the extent that any goods and/or services covered by this contract are supplied by Seller for Buyer's use in performance of any government contract or subcontract, Seller shall comply with all applicable government regulations.

16. Termination. Buyer may terminate this Agreement at any time and without liability to Seller upon written notice to Seller, in the event of the following: (i) insolvency of the Seller; (ii) filing of a voluntary or involuntary petition in bankruptcy by or against Seller; (iii) appointment of a custodian, receiver or trustee for Seller; or (iv) execution of an assignment for the benefit of creditors by Seller. Buyer reserves the right to terminate all or any part of any Purchase Order without liability to Seller immediately if Seller has breached any obligation under this Agreement. Buyer may also terminate all or any part of any Purchase Order for its own convenience upon ten (10) days' notice to Seller, in which Seller shall be entitled to an equitable amount not in excess of its verified direct costs reasonably expended prior to receipt of notice, less any mitigated or salvaged value. Except as otherwise set forth in this Section, Seller's sole and exclusive remedy for any termination shall be payment for the Goods received and accepted and Services accepted by Buyer prior to termination.

17. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by an authorized representative of Buyer. 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.

18. Confidential Information. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, 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 this Agreement is confidential, solely for the purpose

of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. In addition to all other remedies available at law, Buyer may seek equitable relief including, including injunctive relief, against Seller and its representatives to prevent the breach or threatened breach of this Section 18 and to secure its enforcement. Buyer grants Seller no right or license in or to its confidential or proprietary information except to the extent minimally necessary to deliver the Goods or Services, and only for such purpose.

19. Cumulative Remedies. Buyer's rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

20. Force Majeure and Allocation. 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: (i) Act of God and natural disasters such as floods, fire and earthquakes, (ii) epidemics and quarantines, (iii) violence such as war, hostilities, terrorist acts and civil unrest, (iv) government action or intervention, such as laws, orders and embargoes, or (v) weather event which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Seller acknowledges and agrees Seller's (i) failure to obtain or delay in obtaining supply, (ii) economic hardship, (iii) equipment or tool mechanical failure(s), (iv) shortages of power, utility, infrastructure or transportation, or (v) changes in market conditions are not considered Force Majeure Events. If a Force Majeure Event prevents Seller from carrying out its obligations under this Agreement for a continuous period of more than ten (10) business days, Buyer may terminate this Agreement immediately by giving written notice to Seller, without any liability to Seller. Further, if at any time the parties determine that Seller's supply is insufficient to meet the actual or forecasted needs of Buyer and forecasted needs of Seller's other customers (whether under contract or not), Seller shall allocate its entire remaining supply to fulfill Buyer's needs first. In allocating the risk of delay or failure of performance of their respective obligations under this Agreement, the parties have not taken into account the possible occurrence of any of the events listed herein or any similar or dissimilar events beyond their control. Therefore, irrespective of whether such listed, the parties agree that similar or dissimilar events were foreseeable as of the date of this Agreement.

21. Non-Assignment. Seller may not assign or delegate its own rights or obligations under this Agreement without Buyer's prior written consent. Any purported assignment without such consent is void.

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. 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 Sale of Goods Act as in effect in the Province of Ontario, Canada, 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 Ontario, Canada, and Buyer and Seller expressly consent and submit to the jurisdiction of such courts.

24. Imported Goods. Unless otherwise expressly agreed to in writing by Buyer, all goods purchased hereunder that originate from sources or suppliers based outside of the United States of America shall

be sold in accordance with the freight terms listed on the Purchase Order. Imported Goods shall be shipped as Buyer so directs. Seller shall act as the importer of records in the United States for all such goods. The Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this contract.

25. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties as 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.

26. 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.

27. 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: Insurance, Compliance with Laws, Confidential Information, Indemnification, Choice of Law, and Survival.

28. 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.