

PLEASE READ CAREFULLY – THE FOLLOWING TERMS AND CONDITIONS AFFECT YOUR LEGAL RIGHTS

1. **AGREEMENT:** These Terms and Conditions ("Terms") are part of the complete agreement between FIVE POINT ACQUISITIONS, LLC DBA R & S INDUSTRIAL SUPPLIES ("Seller") and the buyer identified on the Invoice ("Buyer") for all products, materials, and services provided by Seller to Buyer pursuant to the Invoice ("Goods"). The complete agreement between Buyer and Seller is the Seller's Invoice, the Guarantor's Continuing (Personal) Guaranty (if applicable), and these Terms (collectively "Agreement"). These Terms supersede and cancel all prior communications between the parties, except as specifically provided in the Agreement. The parties agree that these Terms cannot be contradicted, supplemented or explained by evidence of course of performance, course of dealing or usage of trade. The parties agree that to the extent these Terms call for the delivery of services in addition to Goods, that such services are incidental to the primary purpose of providing the Goods.
2. **MODIFICATIONS:** Acceptance by Buyer to the Agreement is expressly limited to the terms of the Agreement. Unless otherwise expressly agreed to in a writing signed by Seller, no additional or supplemental terms proposed by Buyer, or any subsequent agreements or communications in any way altering the Agreement, are part of the parties' Agreement for the sale and purchase of the Goods.
3. **OWNERSHIP AND RISK OF LOSS:** Unless otherwise specified in writing by Seller, for Goods shipped to a destination within the United States, all Goods are F.O.B. Seller's Oregon location, unless otherwise specified in writing by Seller, and for Goods shipped to a destination outside the United States, all Goods are F.C.A. Seller's Oregon location. Seller has no obligation to notify Buyer of any shipment.
4. **SECURITY INTEREST AND LIENS:** Buyer grants Seller a security interest in the Goods until Seller is fully paid. No Goods furnished by Seller will become a fixture by reason of attachment to real estate or other property. Buyer agrees to assist Seller in taking all necessary steps to perfect and maintain Seller's security interest, and Buyer gives Seller permission to take any action, including, without limitation, to file any financing statement or other instrument, to document or perfect its security interest. Buyer's acceptance of the Goods shall be deemed Buyer's authentication to this Agreement. Nothing in this Agreement is intended to limit or waive Seller's rights to enforce any other liens, including, without limitation, construction liens, or to pursue any additional remedies available under applicable law.
5. **PAYMENT:** Buyer shall pay all invoiced amounts to Seller by the date provided in Seller's Invoice ("Payment Due Date"). On any amount not timely paid, Seller may assess a late charge equal to the lesser of 1.5% interest per month or the maximum rate permitted by law, without notice to Buyer, on all accounts starting on the day after the Payment Due Date. Payment shall be made in American Dollars. Seller reserves the right to cancel this Agreement at any time.
6. **ACCEPTANCE:** The Goods shall be deemed accepted by Buyer upon receipt, unless within 48 hours of delivery, Buyer rejects the Goods and notifies Seller in writing of the basis for such rejection. Buyer agrees to examine each invoice immediately upon receipt and inform Seller in a detailed written statement of any dispute as to amount or quality of the Goods or services within 10 days of the date of Seller's Invoice. Failure by Buyer to timely notify Seller in writing of either the Buyer's rejection of the Goods and the basis for such rejection or of any dispute to the Invoice shall constitute a waiver by Buyer of any right to reject the Goods or to make any dispute to the Invoice and an admission by Buyer that the Goods are acceptable and accepted and that all terms of the Agreement are reasonable and accepted by Buyer. "MADE TO ORDER" GOODS ARE NOT RETURNABLE AND NONREFUNDABLE.
7. **INDEMNIFICATION:** BUYER SHALL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM ANY CLAIM, SUIT, DAMAGE, OR LOSS (INCLUDING, WITHOUT LIMITATION, ATTORNEY FEES) RESULTING FROM ANY ACT OR OMISSION OF SELLER, ITS AGENTS OR ASSIGNS, WITH RESPECT TO THE GOODS, WHICH EXPLICITLY INCLUDES, WITHOUT LIMITATION, ANY CLAIM, SUIT, DAMAGE OR LOSS (INCLUDING, WITHOUT LIMITATION, ATTORNEY FEES) RESULTING FROM SELLER'S NEGLIGENCE.
8. **LIMITATIONS OF LIABILITY AND DAMAGES:** BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY AND ALL DAMAGE CAUSED BY, ARISING OUT OF, OR RELATING TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM OF NEGLIGENCE AGAINST SELLER OR ANY CLAIM FOR BREACH OF ANY WARRANTY, EXPRESS OR IMPLIED, SHALL BE THE RETURN OF THE GOODS AND REFUND, OR REPAIR AND/OR REPLACEMENT OF NONCONFORMING GOODS OR PARTS THEREOF THAT SELLER DEEMS DEFECTIVE. WITHOUT LIMITING THE FOREGOING, SELLER SHALL HAVE NO LIABILITY FOR ANY LOSS OF PROFIT OR USE, PROPERTY DAMAGE, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. ALL ACTIONS OR CLAIMS, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THE AGREEMENT MUST BE COMMENCED WITHIN 2 YEARS AFTER THE DATE OF THE INVOICE ISSUED BY SELLER.
9. **DISCLAIMER OF WARRANTIES:** SELLER HAS NOT GIVEN BUYER ANY EXPRESS WARRANTIES RELATING TO THE GOODS, UNLESS SUCH PROMISE IS IN A WRITING SIGNED BY SELLER AND SPECIFICALLY TITLED "WARRANTY". THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO BUYER REGARDING THE GOODS, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND SELLER HEREBY DISCLAIMS THE SAME TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW.
10. **GOVERNING LAW AND JURISDICTION:** BUYER AND SELLER EXPRESSLY AGREE THAT THE AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF OREGON WITHOUT REGARD TO CONFLICT-OF-LAW RULES. THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT. Buyer consents to the jurisdiction of any court with jurisdiction over Marion County, Oregon. Buyer waives any objection regarding proper venue in any other court. Buyer agrees that Buyer and Buyer's officers, employees, and agents shall appear, at Buyer's expense, for deposition in Marion County, Oregon. Nothing herein shall limit Seller to bring any proceeding against Buyer in any competent court of any other jurisdiction.
11. **EVENT OF DEFAULT:** It is an Event of Default under this Agreement: If Borrower fails to pay timely any amount owing to Seller as provided in Seller's Invoice(s), without any prior notice required; if any party defaults in the performance of any other obligation under the Agreement and fails to cure such default within 15 days of receiving written notice of the default; or if Seller reasonably believes in good faith that Buyer is insolvent. Seller shall have all rights and remedies upon an Event of Default under this Agreement, applicable law and in equity, including without limitation the Uniform Commercial Code, without suffering an election of remedies.
12. **FORCE MAJEURE:** The parties agree that any delay in either party's performance of any covenant, provision, representation or warranty due to an event of Force Majeure shall not cause such failing party to be in default of the Agreement, so long as, as promptly as able, and within a reasonable period of time after such Force Majeure no longer prevents such party from performing, such party promptly cures its performance and fully performs under the Agreement. Application of this Paragraph shall not be applied in a manner that causes unjust enrichment of the failing party. Force Majeure shall mean an occurrence beyond the reasonable control of the party affected including, but not limited to, acts of God or the public enemy, terrorism, strikes, riots, shortages of labor or materials, war, flood, sabotage, embargo, or any governmental laws, regulations or restrictions.
13. **TRADE TERMS:** Except to the extent this Agreement expressly provides for a different interpretation, trade terms (F.O.B., F.C.A.) shall be interpreted as follows: (A) For Goods to be shipped to a destination within the United States, trade terms shall be defined in accordance with the Oregon Uniform Commercial Code. (B) For Goods to be shipped to a destination outside the United States, trade terms shall be defined in accordance with the International Rules for the Interpretation of Trade Terms, as amended ("Incoterms"), as published by the International Chamber of Commerce and in effect as of the date of the Invoice.
14. **TAXES:** Any applicable taxes (federal, state, local or foreign) and duties and governmental charges of any kind are the sole responsibility of the Buyer. Unless expressly specified, all prices do not include any taxes duties, or governmental charges.
15. **SETOFF:** Buyer shall not be entitled to setoff any amounts due to Buyer against any amounts due to Seller pursuant to the Agreement.
16. **WAIVER:** No waiver of any provision of the Agreement or any rights or obligations of any party shall be effective except pursuant to a written instrument signed by the party or parties waiving compliance. A waiver shall be limited to only the specific instance and for the specific purpose stated in writing.
17. **SEVERABILITY:** If any provision of the Agreement is determined to be illegal or unenforceable, the validity of the remaining provisions shall not be affected thereby, and such illegal or unenforceable provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.
18. **BINDING EFFECT:** This Agreement is binding upon and shall inure to the benefit of the parties' successors, heirs and assigns.
19. **ATTORNEY FEES:** If Buyer fails to pay any amounts owing under the Agreement, Buyer shall reimburse Seller for all costs and expenses reasonably incurred by Seller in recovering the amounts due, including, without limitation, attorney fees, costs, and collection fees, whether or not a suit or other form of dispute resolution is initiated, and including in the event Buyer becomes involved in or subject to any bankruptcy or other insolvency or receivership proceeding. If any claim, suit or proceeding ("Action") is instituted which arises out of or relates to the Agreement, the prevailing party in such Action shall recover, in addition to costs, reasonable attorney fees incurred in preparation, prosecution or defense of such Action, as determined by the court, and if appealed, such reasonable attorney fees as determined on appeal.
20. **NOTICES:** All notices required under the Agreement shall be in writing and deemed effective upon personal delivery, or upon receipt by electronic mail, or upon receipt by certified or overnight mail, to the addresses contained in the Agreement.
21. **SURVIVAL:** Paragraphs 7-10 and 16-19 above and the Guarantor's Continuing (Personal) Guaranty (if applicable) shall survive termination of the Agreement.