1. PRICE; OFFER; ACCEPTANCE. The sale of products (“Products”) by Whitmore Manufacturing, LLC (“Seller”) to the “Buyer” identified on the Product purchase order (the “PO”), are exclusively governed by these Terms and Conditions of Sale and Seller’s price list (collectively, these “Terms” both of which form a part of Seller’s acknowledgement of each PO (the “Order Acknowledgement”). Seller’s pricing for the Products is valid for 30 days from date of quote, and afterwards Seller reserves the right to increase any price in the event of increased costs beyond Seller’s reasonable control including, without limitation energy, labor, government tariffs, and raw material costs, or modifications to the Specifications (defined herein). When Buyer issues a PO or accepts the Products, Buyer accepts these Terms and any additional or different terms or modifications to these Terms proposed by Buyer, whether in the PO or otherwise, are expressly rejected by Seller except for terms related to Product prices, quantity, specifications, delivery schedules, and locations that match or otherwise align with the Order Acknowledgement. Seller’s issuance of an Order Acknowledgement constitutes Seller’s acceptance of Buyer’s PO subject to the express conditions that Buyer assent to such additional and different terms herein and acknowledge that these Terms and each PO and Order Acknowledgment constitute the entire agreement between the parties (the “Contract”), and Buyer will be deemed to have so assented and acknowledged unless Buyer notifies Seller to the contrary in writing within 10 days following receipt of the Order Acknowledgement. These Terms do not apply if the parties have executed a separate formal written agreement.

2. CHANGES; RETURNS. Seller will consider Buyer’s requests for changes to a PO; however, Seller may charge fees for changes involving Products (a) not stocked as a standard item; (b) not packed in standard cartons or packages; or (c) for which special manufacturing or post-manufacturing alterations are required. Any such requested changes will be subject to Buyer’s understanding that Seller will have the right to fill the PO as it sees fit in the course of its manufacturing schedules and to hold the Products for Buyer’s account at Buyer’s expense and risk pending receipt of definite shipping instructions and, where required, of governmental authorization. Products may be returned to Seller for credit only if permission for such return is granted by Seller in accordance with its return policy. Special orders (i.e., private label or special packaging) cannot be returned for a credit once the PO has been placed.

3. INSPECTION; ACCEPTANCE. Seller will inspect the Products prior to shipment to confirm that they comply with the terms of this Contract and the Product materials, qualities and components which comprise the Product, including, but not limited to, size, technical standards, storage requirements, quality standards, shelf-life and any other pertinent features of the Product(s). Specifications. Seller will have a period of 15 days to inspect the Products following physical receipt by Buyer (“Inspection Period”) and either (a) approve and accept the Products, (b) notify Seller of any nonconforming Product at Buyer’s expense and risk pending receipt of definite shipping instructions and, where required, of governmental authorization. Buyer agrees that Seller is not responsible for any loss, damage or injury to the Products. Buyer agrees that Seller is not responsible for any loss, damage or injury to any other person or use any such information for any purpose other than Buyer’s own use, including without limitation all risks and expenses incurred in the storage and transportation of the Products and all insurance charges, fees, taxes, customs, duties and other governmental charges or levies and all other expenses whatsoever thereafter incurred with respect to the Products. Delivery dates are estimated and are subject to change. Seller may make delivery in installments, each of which may be separately invoiced and paid as billed without regard to all other installments. Delivery dates are subject to frequent changes due to circumstances beyond Seller’s control and Seller shall have the right to accept remaining installments. Seller will use reasonable efforts to deliver Products on time, but will not be liable for any expenses or damages incurred as a result of late delivery. Freight charges on shipments outside of the US will be as specified on the Order Acknowledgement or on the price list for the Products. In the event of any general increase in freight costs or any ruling or regulation affecting freight rates which results in increased freight costs, Seller may, at its option, increase the price for the Products to reflect such additional freight costs without advance notice. All Products are shipped in nonrefundable containers.

4. END USE. Buyer is solely responsible for determining the suitability of the use for the Products. Buyer agrees that Seller is not responsible for any loss, damage or injury to person or property arising out of Buyer’s purchase, possession, or use of any Products supplied by Seller. Buyer will comply with the Specifications and all applicable laws relating to the use, storage and/or handling of the Products. Buyer will indemnify Seller against any and all losses, damages, liabilities, claims, suits, costs and expenses, including reasonable attorney’s fees and expenses, incurred in connection with or arising out of the Products, to the extent that such Claim would have been avoided, but for such modification; or (3) Products made to Specifications not provided by Seller. Should a Claim arise, Buyer may, in its sole discretion (a) procure the right for Buyer to continue using the Products; (b) replace the Products with non-infringing Products; (c) modify the Products to make them non-infringing; or (d) if Seller determines that options (a) through (c) are not practical, terminate Buyer’s right to use the Products and issue a refund equal to the purchase price for the affected unused Products. This paragraph states Buyer’s exclusive remedy in the event of a patent infringement.

5. FORCE MAJEURE. With the exception of payment and confidentiality obligations, neither party will be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, unusually severe weather, civil commotion, terrorism, military authority, war, riot, fire, labor trouble or strikes, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental authority over Seller or actions, unforeseen circumstances, or causes beyond such party’s reasonable control.

6. CHOICE OF LAW; COMMENCEMENT OF ACTION; COSTS AND EXPENSES. This Contract will be governed and interpreted in accordance with the laws of the State of Texas. Any action against Seller for breach of contract, breach of warranty or otherwise must be commenced within 1 year after the cause of action has accrued. Buyer will be obligated to Seller for all costs and expenses (including reasonable attorney’s fees and expenses for collection agencies) incurred by Seller in collecting any amounts not timely paid by Buyer hereunder or in exercising any of its other rights hereunder.

7. PATENT INFRINGEMENT. Seller will defend or settle at its sole expense, any Claims against Buyer alleging that the use of the Products, infringes a US patent, copyright, trade secret or other intellectual property right; provided (a) the alleged infringement does not arise from Seller’s compliance with Specifications prescribed or otherwise furnished by Buyer; (b) Seller receives prompt written notice of such Claim and exclusive control over the its defense and/or settlement; and (c) Buyer provides Seller with all information available to Buyer for the defense and cooperates with Seller in the defense, and does not take a position adverse to Seller. Further, Seller will have no liability hereunder to the extent a claim of infringement is based on (1) a modification to the Products by Buyer or a third party, but only to the extent that such Claim would have been avoided, but for such modification; (2) use by Buyer of the Products in combination with other products not made by Seller, but only to the extent that such Claim would have been avoided, but for such combination; or (3) Products made to Specifications not provided by Seller. Should a Claim arise, Buyer may, in its sole discretion (a) procure the right for Buyer to continue using the Products; (b) replace the Products with non-infringing Products; (c) modify the Products to make them non-infringing; or (d) if Seller determines that options (a) through (c) are not practical, terminate Buyer’s right to use the Products and issue a refund equal to the purchase price for the affected unused Products. This paragraph states Buyer’s exclusive remedy in the event of a patent infringement, copyright, trade secret or other intellectual property infringement.

8. CREDIT. Seller will charge or collect interest at the rate of 1.5% per month or the maximum rate permitted by law for overdue amounts, whichever is less. Seller may, at its option, increase the price for the Products to reflect such additional freight costs without advance notice. All Products are shipped in nonrefundable containers.

9. INTERNATIONAL SALE OF GOODS WILL NOT APPLY TO THIS WARRANTY OR CONTRACT. Seller will not be liable for any loss, damage or injury to Buyer, or any person or entity whatsoever, arising from Seller’s compliance with Specifications prescribed or otherwise furnished by Buyer, whether or not such loss, damage or injury results from Seller’s compliance with Specifications prescribed or otherwise furnished by Buyer. Seller will defend or settle at its sole expense, any Claims against Buyer alleging that the use of the Products, infringes a US patent, copyright, trade secret or other intellectual property right; provided (a) the alleged infringement does not arise from Seller’s compliance with Specifications prescribed or otherwise furnished by Buyer; (b) Seller receives prompt written notice of such Claim and exclusive control over the its defense and/or settlement; and (c) Buyer provides Seller with all information available to Buyer for the defense and cooperates with Seller in the defense, and does not take a position adverse to Seller.

10. CHOICE OF LAW; COMMENCEMENT OF ACTION; COSTS AND EXPENSES. This Contract will be governed and interpreted in accordance with the laws of the State of Texas. Any action against Seller for breach of contract, breach of warranty or otherwise must be commenced within 1 year after the cause of action has accrued. Buyer will be obligated to Seller for all costs and expenses (including reasonable attorney’s fees and expenses for collection agencies) incurred by Seller in collecting any amounts not timely paid by Buyer hereunder or in exercising any of its other rights hereunder.

11. CONFIDENTIALITY. Buyer agrees that all formula and technical and pricing information relating to the Products are confidential and proprietary to Seller and that Buyer is purchasing the Products solely for use and consumption by Buyer’s, as applicable, and for no other use, analysis, reverse engineering or similar distribution to third parties, all of which are strictly prohibited. Buyer will not disclose any confidential or proprietary information about Seller or the Products to any other person or use any such information for any purpose other than Buyer’s purchase and use of the Products. Buyer will not provide samples or extra Products to any third party.

12. COMPLIANCE. The parties will comply with applicable federal, state, local and international laws, orders, rules, regulations and ordinances, governing the export/import and sale of the Products, including all applicable laws related to commerce, commercial, environmental, health and occupational safety, employment and labor, US and foreign bribery and corruption (i.e., Foreign Corrupt Practices Act, anti-bribery measures, US export control and economic sanctions, U.S. import laws, international trade regulations, and the local laws in countries of import). Unless otherwise agreed in writing, Buyer will be responsible for compliance with applicable statutory and regulatory requirements relating to chemicals during Buyer’s import, shipping, storage, export, distribution, application and use of Products. If Buyer exports, re-exports, diverts, stores, transfers, distributes, applies, uses or imports the Products, Buyer assumes responsibility for obtaining any export/import authorizations and for complying with any required registration and/or disclosures relating to chemicals. Unless otherwise agreed, Seller is not responsible for regulatory and other legal compliance (a) outside the US, including, without limitation, the European regulation for the Registration, Evaluation, Authorization and Restriction of Chemicals (“REACH”); (b) as to goods made by Buyer which incorporate the Products; or (c) as to any use of the Products by Buyer other than as covered by the Limited Warranty.

13. ENTIRE AGREEMENT; WAIVER; SEVERABILITY. This Contract constitutes the entire agreement between Buyer and Seller with respect to the sale of Products supplied hereunder. Waiver by a party of any provision hereof in one instance will not constitute a waiver as to any other instance. If any provision of this Contract is unenforceable, invalid or illegal, the remaining provisions will remain in full effect.

Terms and Conditions of Sale – 09/21