

TERMS AND CONDITIONS OF SALE

All sales by Harwil Corporation (“**Harwil**”) are made subject to these Terms and Conditions of Sale (hereinafter “**Agreement**”). Harwil expressly rejects any different or additional terms and conditions contained in any documents submitted by Buyer. Harwil’s provision of credit, acceptance of any purchase order and/or sale of any goods are expressly made conditional on Buyer’s assent to these Terms and Conditions of Sale. All orders by Buyer may be accepted only upon issuance of Harwil’s sales order acknowledgement. Buyer acknowledges that he/she/it has read the terms and conditions of this Agreement, understands them and agrees to be bound by them.

1. Except as otherwise agreed in writing and signed by Buyer and Harwil, the applicable Harwil sales order acknowledgement, together with these Terms and Conditions of Sale constitute the entire agreement between Harwil and Buyer relating to the sale of such goods by Harwil. Terms or conditions contained in any document issued by Buyer that in any manner purports to alter, modify, change, suspend or add to any term or condition contained herein shall be deemed excluded from such Buyer document and waived by Buyer. Buyer expressly agrees that Harwil may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.

2. The purchase price of the goods shall be as stated on the face of the applicable Harwil sales order acknowledgement; provided, however, that if Harwil announces a general price increase, the purchase price shall be revised to include such price increase. Harwil may, in its sole discretion, add a surcharge to the price of goods predicated upon any increase in the cost of raw materials, labor or energy. Such surcharge may be adjusted by Harwil periodically to reflect a change in such costs.

3. Buyer cannot modify, cancel or otherwise alter orders without Harwil’s prior written consent. Any such cancellation, modification, or alteration shall be subject to conditions as specified by Harwil at such time, which shall include protection of Harwil against any losses or additional costs or expenses.

4. All shipping charges are to be paid by Buyer. Any employee of Buyer signing any delivery document provided by Harwil shall be deemed fully authorized on behalf of Buyer to sign such document. Neither freight charges nor tax is subject to any discount. Risk of loss or damage in transit shall be borne by Buyer, and all claims shall be made directly with the carrier. Buyer shall indemnify, defend and hold harmless Harwil from against any claims, damages or liabilities suffered by Harwil relating to or resulting from any acts or omissions of the carrier.

5. Delivery dates are approximate. Harwil shall not be responsible for non-shipment of goods or delays in delivery or performance due to any cause beyond Harwil’s reasonable control, including, but not limited to, acts of God; acts of Buyer; pandemics or governmental orders issued to address a pandemic; strikes or other labor disturbances; Harwil’s inability to obtain, or material increases in the cost of, fuel, raw materials or parts; delays in transportation; repairs to equipment; fires; or accidents. Acceptance of goods upon delivery shall constitute a waiver by Buyer of any claims for damages on account of delays in delivery or performance.

6. Harwil warrants that the goods will be free from defects in materials and workmanship for a period of one (1) year from the date of original shipment. Harwil reserves the right and sole discretion to modify or change the composition, design and appearance of the goods at any time. Harwil shall have no liability if Buyer (a) fails to fulfill its responsibilities, including as set forth herein; (b) neglects, alters or improperly uses the goods, including use with non-compatible devices or chemicals; or (c) repairs, refurbishments or alters the goods, or allows a third party to do so.

7. Buyer shall make appropriate analysis and tests to determine the suitability of the goods for the intended use prior to purchase. Harwil provides no warranty and assumes no responsibility for corrosive attack on any material, component or design features associated with any of its goods. Corrosion resistance information listed in Harwil’s specification sheets, installation sheets and product brochures is solely for general background information. This information has been compiled from literature published by various material suppliers and by

equipment manufacturers who use these materials in their products. In as much as these data are based on tests by entities over which Harwil has no control, Harwil does not guarantee, and shall not be liable for, the accuracy of such tests. Buyer acknowledges that several factors, including concentration, temperature, degrees of agitation and presence of impurities, influence the rate of corrosion. Buyer agrees to test the materials before installation of the goods.

8. No claim for damages for goods that do not conform to the specifications will be allowed unless Harwil is given (a) immediate notice after the delivery of the goods to the first destination to which they are shipped, and (b) a reasonable opportunity to inspect them. Goods for which damages are claimed shall not be returned, repaired or discarded without Harwil’s prior written consent. BUYER’S EXCLUSIVE REMEDY AGAINST HARWIL, AND HARWIL’S SOLE OBLIGATION, FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, SHALL BE LIMITED TO HARWIL’S REPLACING OR REFURBISHING THE GOODS THAT DO NOT CONFORM TO SPECIFICATIONS OR, AT HARWIL’S OPTION, REFUNDING THE PURCHASE PRICE. IN NO EVENT SHALL HARWIL HAVE ANY LIABILITY FOR DAMAGES IN AN AMOUNT EXCEEDING THE PURCHASE OF THE GOODS SOLD HEREUNDER, NOR SHALL HARWIL HAVE ANY LIABILITY FOR LOST PROFITS, OR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH DAMAGES ARE FORESEEABLE.

9. Payments by check, whether full or partial, received from or for the account of Buyer, regardless of writings, legends or notations upon such checks or payments, and regardless of other writings, statements or documents delivered in connection therewith, shall be applied by Harwil against any amount owing by Buyer with full reservation of all of Harwil’s rights, without an accord and satisfaction or any reduction of Buyer’s liability.

10. In the event Buyer fails to make payment to Harwil of any amounts due and owing to Harwil (including any applicable surcharge or freight charge), all amounts owing to Harwil shall be immediately due and payable, Harwil shall have the right to terminate any of Buyer’s orders or any unfulfilled portion thereof, and Harwil may terminate any other agreement between Harwil and Buyer. Harwil may charge interest on the outstanding balance at an annual rate of 18% or the highest rate allowed by law (whichever is less). Harwil shall have the right to employ attorneys, consultants and experts to collect the balance due, and Buyer agrees to pay all collection costs incurred by Harwil, including reasonable attorneys’ fees, consultants’ fees, experts’ fees and costs of suit.

11. This Agreement shall be governed by the laws of the state of California. Buyer, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction of the state and federal courts of the state of California for any litigation which may arise out of or be related to this Agreement. Buyer expressly waives any objection based on *forum non-conviens* or any objection to venue of any such action. Harwil reserves the right to enforce the terms and conditions of this Agreement at any time and none of them shall be deemed waived or modified unless such waiver or modification is in writing signed by a duly authorized officer of Harwil. All rights and remedies granted herein are in addition to all remedies available at law or in equity.

12. BUYER AGREES THAT THE SALE OF PRODUCTS BY HARWIL TO BUYER IS EXPRESSLY CONDITIONED UPON BUYER’S ASSENT TO THE FOREGOING TERMS AND CONDITIONS OF SALE FOR ALL CURRENT AND FUTURE PURCHASES FROM HARWIL. BUYER ACKNOWLEDGES RECEIPT AND ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE, WHICH MAY ONLY BE MODIFIED AS PROVIDED THEREIN.

13. HARWIL MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

