

## **TERMS AND CONDITIONS OF USE AND SALE**

### **INTRODUCTION**

#### Your Acceptance of Contract Terms

Unless otherwise expressly agreed in a writing signed by you and an authorized representative of H.W. Eckhardt Corporation (“H.W. Eckhardt Corporation,” “H.W. Eckhardt,” “we” or “us”), these terms and conditions of use and sale and the privacy policy, as currently in effect and as modified by us from time to time (the “H.W. Eckhardt Terms”), and the provisions included in any documentation you receive from us relating to your purchase of the products we sell (“Products”), including but not limited to any quotation, order acknowledgment, packing list or invoice which we provide, constitute the exclusive and complete agreement between you and H.W. Eckhardt Corporation (collectively, the “Terms and Conditions”), with respect to (i) your use of our website at hweckhardt.com any of our mobile applications, any of our e-commerce applications, or our printed catalog (collectively, the “H.W. Eckhardt Properties”), and (ii) your purchase and use of the Products. By using any of the H.W. Eckhardt Properties, purchasing any Products from us, or by clicking the “I agree” button on our website, any of our e-commerce applications or any of our mobile applications, you acknowledge that you have read, understood and agree to be bound by the Terms and Conditions. In the event of any conflict between the provisions of the H.W. Eckhardt Terms and the provisions set forth in any documentation you receive from us relating to your purchase of Products, the provisions of the H.W. Eckhardt Terms shall prevail. In addition, if you use any of our e-commerce or mobile applications, you are also subject to the end user license agreement associated with the e-commerce or mobile application, but if and to the extent that there is any conflict between the Terms and Conditions and the end user license agreement for an e-commerce or mobile application, the Terms and Conditions shall prevail. Our acceptance of any order submitted by you is expressly subject to your acceptance of the Terms and Conditions, which may be evidenced solely by your acceptance of any Products ordered. Any additional, different or conflicting terms in any document or communication you submit to us are rejected and shall have no effect unless we agree to them in a writing signed and sent to you by our authorized representative. The Terms and Conditions supersede, override and exclude all prior or contemporaneous oral or written communications.

### **Changes in Terms and Conditions**

The H.W. Eckhardt Terms are effective as of the “Terms and Conditions Version Date” set forth below. We reserve the right to change the H.W. Eckhardt Terms at any time by providing notice to you. That notice will be given by one or more of the following: (i) providing you with an electronic notification through our website, by e-mail or other means of electronic communication or through any of our e-commerce or mobile applications, or (ii) making a revision to the H.W. Eckhardt Terms and changing the version date shown below. By clicking the “I agree” button in connection with an electronic notification of a change, by using any of any of the H.W. Eckhardt Properties, or by purchasing a Product from and after the new version date, you signify your acceptance of the revised H.W. Eckhardt Terms. The H.W. Eckhardt Terms shall not be

changed, supplemented or interpreted by any course of dealing between the parties and they shall not be interpreted against us because we have drafted them.

## **TERMS AND CONDITIONS OF USE**

### **Licensed Use**

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### ***Grant of Limited Use License.***

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*Prohibited Uses of the H.W. Eckhardt Properties.* Any unauthorized use, change of information or interference with the availability of, access to or proper working of any part or feature of the H.W. Eckhardt Properties or their security measures is prohibited. Without limiting the foregoing, you agree that you will not, directly or indirectly through any third party, engage in any of the following activities with respect to the H.W. Eckhardt Properties or the Content, except as otherwise expressly permitted in the Terms and Conditions with respect to CAD Models and Technical Data Sheets, or agreed to in writing by an authorized representative of H.W. Eckhardt Corporation: (i) copy, mirror, archive, intercept or redirect any Content;

- (ii) redistribute, reproduce, make a derivative work from or commercially exploit the Content in any manner;
- (iii) page or screen scrape, web harvest, or use any robot, spider, indexing agent or other automatic device, process or means to access the H.W. Eckhardt Properties for any purpose, including extracting data from, monitoring or copying the Content;
- (iv) use the H.W. Eckhardt Properties in a manner that could disable, overburden, damage or impair them or interfere with another party's use of them;
- (v) use any device, software or routine that interferes with the proper working of the H.W. Eckhardt Properties;
- (vi) introduce to the H.W. Eckhardt Properties any virus, trojan horse, worm, logic bomb or other material which is malicious or technologically harmful;
- (vii) attempt to gain unauthorized access to, interfere with, damage or disrupt any parts or features of the H.W. Eckhardt Properties or the Content, the servers on which the H.W. Eckhardt Properties and Content is stored, or any server, computer or database connected to the H.W. Eckhardt Properties or operated by us;
- (viii) use a denial-of-service attack or a distributed denial-of-service attack against any of the H.W. Eckhardt Properties;
- (ix) reverse engineer or attempt to extract the source code of any software that comprises any part of the H.W. Eckhardt Properties or the Content;
- (x) display or use any Content for any commercial purpose in any publications, audiovisual works, public performances, or on websites or other applications, including but not limited to in connection with products other than our Products, in any other manner likely to cause confusion, to disparage or discredit us or our licensors, to dilute the strength of the intellectual property owned by us or our licensors, or to otherwise infringe the intellectual property rights of H.W. Eckhardt Corporation or any third party;
- (xi) frame or use framing techniques to enclose any trademark, logo, intellectual property or other proprietary information (including images, text, page layout or form) of H.W. Eckhardt Corporation without our express written consent;
- (xii) use any metatag or any other "hidden text" utilizing our name or trademarks without our express written consent; or
- (xiii) use any technology or other means to hide your identity.

#### **Use of CAD Models**

The CAD models on the H.W. Eckhardt Properties ("CAD Models") are being made available to help you decide whether to purchase Products from us. You may download the CAD Models and share them with others in your organization or with third parties acting on behalf of or rendering services to you or your organization (including your data center or cloud service providers), but only for purposes of deciding whether to purchase Products from us or in order to develop design drawings and prototypes for use by you or your organization in connection with a decision regarding whether to purchase Products from us. You shall not use the CAD Models to engage in 3D printing or other fabrication of the objects depicted in the CAD Models for any other purpose, and you shall not otherwise redistribute or make available the CAD Models (or any design drawings or prototypes that incorporate them) to any third parties, including third parties in the business of selling products similar to the Products.

The CAD Models do not contain any technical information other than what is readily observable, specified by industry standards or provided to us by our suppliers. The

dimensions and other technical specifications of Products may vary from those shown in the CAD Models, due among other reasons to tolerances associated with manufacturing processes. Manufacturing tolerance information is considered proprietary by many of our suppliers and is not always provided to us. Thus tolerance information may not be reflected in the CAD Models. You acknowledge and agree as follows: (i) your use of the CAD Models is at your own risk and you are solely responsible for any use you make or permit others to make of the CAD Models; (ii) H.W. Eckhardt Corporation makes no representation or warranty (express or implied) with respect to the CAD Models, including but not limited to the accuracy or completeness of Product dimensions or any other technical specifications contained in or accompanying the CAD Models, non-infringement of third party rights, and quality, suitability, fitness for purpose or title; (iii) H.W. Eckhardt Corporation may terminate or limit your access to the CAD Models for any reason at any time; and (iv) to the fullest extent permitted by law, you shall indemnify us and hold us harmless from and against any and all liabilities, losses, damages, costs and other expenses (including court costs and reasonable attorneys' fees) resulting from claims asserted by you or others as a result of your use of the CAD Models.

### **User Content**

*Submission of User Content to Us.* We are pleased to hear from our customers. We may from time to time seek feedback from our customers and other users of the H.W. Eckhardt Properties and we may enable them to submit, post or upload reviews, comments, suggestions, messages, photographs, videos and other content (collectively, "User Content").

*Disclaimer of Liability for User Content.* We do not control, endorse or verify any User Content and we make no representation or warranty concerning its authenticity, integrity or accuracy. Reliance on or use of any User Content is solely at your own risk. To the fullest extent permitted by law, we are not responsible or liable for any User Content or for any claims, damages or losses resulting from the use or appearance of any User Content on the H.W. Eckhardt Properties.

*User Content You Submit.* You are solely responsible for all User Content you submit to us. You agree that you will not submit to us any User Content that (i) infringes or otherwise violates the rights of others, including patents, copyrights, trademarks, trade secrets, publicity or privacy rights, (ii) violates any local, state, national, or regional laws of the United States or any other jurisdiction, (iii) is unlawful, obscene, derogatory, threatening, harassing, hateful, racist, defamatory or otherwise objectionable, (iv) uses a false email address, impersonates any person or entity or is otherwise misleading as to its origin, or (v) contains viruses or corrupted files that may adversely affect the Content or the operation of the H.W. Eckhardt Properties. We reserve the right to remove or edit any User Content and to terminate or suspend your account at any time and without notice.

*Your Grant of a License and Other Rights to User Content You Submit.* By submitting User Content to us, you grant to us a non-exclusive, royalty-free, sub-licensable, perpetual, fully-paid, worldwide license (i) to use, reproduce, modify, publish, perform, create derivative works from, distribute and display such User Content in any media, and you hereby waive all "moral rights" with respect to our use of that User Content, and (ii) to use the names, images and likenesses that you submit to us in connection with

that User Content. If and to the extent User Content that you submit to us contains ideas, suggestions, documents or proposals relating to us and our business (“Suggestions”), you acknowledge and agree as follows: (i) your Suggestions do not contain confidential or proprietary information; (ii) we are not obligated to keep your Suggestions confidential and we may use or disclose them in any media worldwide; (iii) we receive submissions from many parties that are similar to the Suggestions, or we may have ideas, concepts or processes similar to the Suggestions already under consideration or in development; (iv) your Suggestions shall be deemed the property of H.W. Eckhardt Corporation, which we will be free (but not required) to evaluate, develop and exploit at our discretion, without any obligation to compensate you or to credit you, and without any other obligation to you; and (v) you hereby assign all right, title and interest in the Suggestions, and any inventions, works, or other subject matter or rights contained in them, to H.W. Eckhardt Corporation.

#### **Consent to Electronic Communication**

When you use the H.W. Eckhardt Properties to purchase products, request information or otherwise solicit an electronic communication from us, or to send emails, text messages or other electronic communications to us for any of these purposes, you consent to receive electronic communications from us in response. You may withdraw your consent to receive electronic communications from us at any time. We may communicate electronically with you in a variety of ways, including by email, text message, in-app push notices, posting notices and messages on the H.W. Eckhardt Properties or by other means. You agree that all notices, disclosures, agreements and other communications that we provide to you electronically satisfy any legal requirement that those communications be in writing. You agree that we may preserve any communication by you to us through any of the H.W. Eckhardt Properties and that we may disclose the data contained in any communication from you if we are required to do so by law or if we determine that preserving or disclosing that data is necessary to (i) comply with legal process, (ii) enforce the Terms and Conditions, (iii) respond to claims that the data you submitted violates the rights of others, or (iv) protect the rights, property or personal safety of H.W. Eckhardt Corporation, our employees, users of the H.W. Eckhardt Properties or the public.

#### **Links and Other Third-Party Applications**

*No Endorsement by Us of Third-Party Websites.* The existence on third-party websites or applications of hypertext links to any of the H.W. Eckhardt Properties does not imply or signify any relationship, endorsement or other connection between H.W. Eckhardt Corporation and the owner or operator of the website or application containing the links. H.W. Eckhardt Corporation is not responsible for inaccuracies in information or for any representations and express or implied warranties, including those of fitness for purpose or merchantability, which may be contained on or implied from any third-party websites or applications containing hyperlinks to hweckhardt.com. H.W. Eckhardt Corporation does not authorize any other parties to make representations or warranties on our behalf.

*Limited Permission to Link to Our Homepage.* You may link to the homepage of hweckhardt.com only if (i) the link or the manner of linking does not damage or take advantage of our reputation, (ii) you do not by such linkage suggest that we approve,

endorse or are in any other way associated with your activities, products or services, and (iii) you immediately remove any links to hweckhardt.com at our request.

*Disclaimers Relating to Third-Party Applications Included by Us.* The H.W. Eckhardt Properties may include third-party technology, software, applications and links to other websites and resources provided by third parties. Any such links are provided for your convenience only. We do not have any control over the content of those third-party websites or resources. You therefore acknowledge and agree as follows: (i) we are not responsible for the practices or policies of third parties or for any loss or damage that may arise from your use of any third-party technology, services, software or applications or any linked third-party website or resource; and (ii) if you use any third-party technology, services or software or access any website or resource linked to the H.W. Eckhardt Properties, you do so at your own risk and subject to the terms and conditions of use of any such third-party technologies, websites or resources.

#### **Disclaimer of Warranties Relating to Use**

THE H.W. ECKHARDT PROPERTIES ARE PROVIDED ON AN “AS-IS” AND “AS-AVAILABLE” BASIS AND YOUR USE OF THEM IS AT YOUR OWN RISK. ACCORDINGLY, THE H.W. ECKHARDT PROPERTIES AND ALL CONTENT PROVIDED THEREIN ARE SUBJECT TO CHANGE AT ANY TIME WITHOUT NOTICE AND NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE H.W. ECKHARDT PROPERTIES OR ANY CONTENT OR TECHNOLOGY INCLUDED IN THEM, INCLUDING WITHOUT LIMITATION (i) WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ACCURACY, COMPLETENESS, QUALITY, SUITABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, AND (ii) WARRANTIES THAT THE H.W. ECKHARDT PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. YOU THEREFORE ACKNOWLEDGE AND AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR ADEQUATE PROTECTION AND BACKUP OF YOUR DATA AND/OR EQUIPMENT IN CONNECTION WITH YOUR USE OF THE H.W. ECKHARDT PROPERTIES. YOU SHALL HOLD H.W. ECKHARDT CORPORATION HARMLESS FROM AND YOU SHALL NOT SUE H.W. ECKHARDT CORPORATION FOR ANY CLAIMS BASED ON YOUR USE OF OR INABILITY TO USE THE H.W. ECKHARDT PROPERTIES OR THE CONTENT.

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TO THE FULLEST EXTENT PERMITTED BY LAW, H.W. ECKHARDT CORPORATION AND ITS EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS WILL NOT BE LIABLE IN CONTRACT, WARRANTY, TORT OR UNDER ANY OTHER LEGAL THEORY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, GOODWILL, LOSS OF DATA OR ANY OTHER LOSSES ARISING FROM YOUR USE OF OR INABILITY TO USE THE H.W. ECKHARDT PROPERTIES OR THE CONTENT, OR FOR YOUR RELIANCE ON THE CONTENT IN THE H.W. ECKHARDT PROPERTIES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **Indemnification Relating to Use**

As a condition to your use of the H.W. Eckhardt Properties, to the fullest extent permitted by law, you agree to defend, indemnify and hold harmless H.W. Eckhardt

Corporation and its respective officers, directors, employees, agents, contractors, vendors and suppliers from and against any liabilities, losses, damages, costs and other expenses (including court costs and reasonable attorneys' fees) arising or resulting directly or indirectly out of (i) any breach by you of the Terms and Conditions, (ii) your use of the H.W. Eckhardt Properties, (iii) User Content submitted by you, and (iv) your use of the CAD Models.

#### **Limitations on International Users**

*Export Control Laws.* Certain Content that may be downloaded by you or is otherwise made available on the H.W. Eckhardt Properties may be subject to United States export control laws. These laws prohibit the export of certain information, software and other technology to certain restricted localities, persons and entities. You agree and acknowledge that no Content, software or other technology may be used, downloaded or exported from the H.W. Eckhardt Properties (i) in or into any country against which the United States maintains a trade embargo, (ii) by or to a person or entity designated on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons List or Entity List, or (iii) otherwise in violation of any applicable United States export control law.

*Compliance with Laws of Other Countries.* H.W. Eckhardt Corporation operates the H.W. Eckhardt Properties from the United States and does not warrant or represent that they are appropriate for use in or otherwise comply with the laws of any jurisdiction outside the United States. You acknowledge and agree that you are solely responsible for ensuring that your use of the H.W. Eckhardt Properties is lawful in any jurisdiction in which you use them.

## **TERMS AND CONDITIONS OF SALE**

### **Prices and Payment Terms**

Published prices don't include taxes, duties, brokerage or shipping costs, and they may be changed without notice. All payments must be in U.S. Dollars. Open accounts may be available on terms approved by us. Payment terms on open accounts are net 30 days, unless otherwise agreed to in writing by both parties. Visa, MasterCard and American Express will generally be accepted for orders, but credit card arrangements are subject to change.

### **Right to Correct, Reject or Cancel Orders**

We reserve the right to correct typographic errors and reject or cancel orders because applicable law prevents the sale of the Products in your area or for any other reason.

#### **Other Charges**

In addition to the published price, we may charge you for shipping, freight, taxes and all other expenses that we incur in connection with the shipping of your order.

#### **Taxes and Governmental Charges**

You are responsible for all applicable national, state, provincial and local sales and use taxes, value added taxes, duties, tariffs and other governmental fees which may be imposed in connection with your purchase of Products from us. When we collect taxes and other governmental fees from you, the amount collected will be stated separately on the invoice. If you are claiming an exemption from sales tax, you are responsible for providing a valid sales tax exemption certificate and you agree that you will not claim a

sales tax exemption for purchases that do not qualify as exempt. If your claim of exemption for any purchase is deemed invalid by the taxing jurisdiction, you will upon request reimburse us for any and all taxes which we are required to pay on that purchase. If any Product which you purchase for resale is subsequently used by you, you will pay the use tax directly to the taxing authority, if required by law, or to us if we are required to pay it. For more information, please see [www.hweckhardt.com](http://www.hweckhardt.com) or contact the appropriate revenue department in your State.

*Quebec Customers.* For purposes of the Quebec sales tax (QST), if you are located in Quebec, Canada, each time you purchase Products from us you represent and warrant to us that you are not an individual consumer purchasing the Products for your own or any other individual's personal consumption, use or enjoyment.

*Australia and New Zealand Customers.* For purposes of Australia's and New Zealand's goods and services tax (GST), if you are located in Australia or New Zealand, each time you purchase Products from us you are certifying that (i) you have a current national Business Number and GST registration in the country to which the Products are being shipped, and (ii) you are acquiring the Products from us only for the purpose of using them in the course of running your enterprise in the country to which the Products are being shipped.

### **Delivery, Title and Risk of Loss**

*Delivery.* Delivery occurs at H.W. Eckhardt Corporation's warehouse when the Product is tendered to the carrier or is picked up by the customer, except for those sales into Canada as to which we agree to act as importer of record in the documentation you receive from us relating to your purchase of Products. With respect to sales into Canada as to which we agree to act as importer of record in the documentation you receive from us relating to your purchase of Products, the place of delivery is the destination in Canada to which we have prepaid the shipping charges.

*Title and Risk of Loss.* Title and risk of loss pass to the customer at H.W. Eckhardt Corporation's warehouse when the Product is tendered to the carrier or is picked up by the customer. For sales as to which we have agreed in the documentation you receive from us relating to your purchase of Products to prepay the shipping charges, we may elect at our sole option to replace or refund the purchase price of a Product damaged in transit.

### **Product Returns**

All returns are subject to prior approval and will include restocking charges and/or cancellation fees. Shortages and defective product must be reported within one week of receipt of order. Due to the wide variety of our product offerings, returns are to be considered on a case-by-case basis. If return is approved, an RMA number may be issued. If so, RMA number will need to be clearly designated on the returned items or packaging.

We reserve the right to reject returns of Products used or damaged by the customer or designated as non-cancellable or non-returnable.

### **Limited Product Warranty**



Because we don't make the Products we sell, our only warranty or other obligation and your only remedy against us with respect to our Products is for us to replace any Product which is defective in material or workmanship when sold and which you return to us. ALL OTHER WARRANTIES AND REMEDIES WITH RESPECT TO THE PRODUCTS WE SELL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE, ARE DISCLAIMED. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OR LIMITATIONS OF IMPLIED WARRANTIES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU AND YOU MAY HAVE ADDITIONAL RIGHTS. HOWEVER, YOU ACKNOWLEDGE AND AGREE THAT IN ALL JURISDICTIONS WE DISCLAIM IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMITTED BY LAW.

**Limitation of Liability and Remedies Concerning Products**

TO THE FULLEST EXTENT PERMITTED BY LAW, H.W. ECKHARDT CORPORATION AND ITS EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS WILL NOT BE LIABLE IN CONTRACT, WARRANTY, TORT OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, GOODWILL, BUSINESS INTERRUPTION OR ANY OTHER LOSSES (OTHER THAN THE COST OF THE PRODUCT OR ITS REPLACEMENT OR REPAIR) THAT ARISE DIRECTLY OR INDIRECTLY OUT OF YOUR PURCHASE OF ANY PRODUCT FROM US, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, WE ALSO DISCLAIM ANY LIABILITY FOR CLAIMS ARISING OUT OF THE MISUSE, IMPROPER SELECTION, FAULTY REPAIR OR IMPROPER MODIFICATION OF A PRODUCT. TO THE FULLEST EXTENT PERMITTED BY LAW, YOUR ONLY RECOURSE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS RELATED TO THE PRODUCTS WE SELL IS THE RIGHT TO RETURN THE PRODUCTS AND OBTAIN AT OUR OPTION A REFUND OF THE PURCHASE PRICE OR REPLACEMENT OF THE PRODUCT. TO THE FULLEST EXTENT PERMITTED BY LAW, OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION (WHETHER IN CONTRACT, WARRANTY, TORT OR OTHERWISE) SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT THAT GIVES RISE TO THE CLAIM. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR ACTION BROUGHT AGAINST US ARISING OUT OF ANY PRODUCT WE SELL TO YOU MUST BE BROUGHT WITHIN ONE YEAR AFTER THE PRODUCT HAS BEEN DELIVERED TO YOU.

Limits on Use of and Reliance on Information We Make Available to You

*Warnings, Information and Instructions.* We do not manufacture any of the Products we sell. We rely entirely on our suppliers to provide all necessary warnings, instructions, chemical content and other information regarding the purchase, installation, use, handling, storage, resale, transportation and disposal of or relating to the Products, including but not limited to any warnings required by California Proposition 65 for Products containing chemicals known to the State of California to cause cancer, birth defects or other reproductive harm. A list of these chemicals is available online from the California Office of Environmental Health Hazard Assessment at [www.p65warnings.ca.gov/](http://www.p65warnings.ca.gov/). The dimensions and other technical specifications of

Products may vary from those shown in the CAD Models due to tolerances associated with manufacturing processes. Because manufacturing tolerance information is considered proprietary by many manufacturers and is not provided to us, tolerance information may not be reflected in the CAD Models. WE MAKE NO REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) CONCERNING AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WE HAVE NO LIABILITY FOR THE ACCURACY OR COMPLETENESS OF ANY WARNINGS, INFORMATION (INCLUDING BUT NOT LIMITED TO PRODUCT DIMENSIONS OR ANY OTHER TECHNICAL SPECIFICATIONS INCLUDED IN THE CAD MODELS) OR INSTRUCTIONS PROVIDED BY OUR SUPPLIERS.

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### **Your Responsibilities to Us**

*Assumption of Risk for Product Information.* H.W. Eckhardt Corporation is solely a reseller of Products manufactured by others. Information about the Products in the H.W. Eckhardt Properties is provided by or is dependent upon information provided by our suppliers ("Product Information"). WE MAKE NO REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) CONCERNING AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WE HAVE NO LIABILITY FOR THE ACCURACY OR COMPLETENESS OF THE PRODUCT INFORMATION. You assume the risk that the Product Information may be incomplete, inaccurate or out of date. We may add, change, discontinue, remove or suspend any of the Product Information or other information included in the Content at any time, without notice or liability. We reserve the right to correct any publishing errors in the Content, including pricing errors.

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*Your Representations and Warranties.* You are responsible for familiarizing yourself with all other available information about the Products prior to your purchase and use of them to determine their suitability for and any limitations on your intended use. In connection with any purchase of Products from us, you warrant, represent,

acknowledge and agree as follows: (i) the purchase, installation, use, handling, storage, resale, transportation, disposal, export or import of the Products by you and any third party to whom you resell them is and will be in compliance with all applicable laws and regulations and will conform to generally recognized industry and professional standards; (ii) you and any third party to whom you resell the Products are or will be knowledgeable concerning the laws and other practices relating to the safe and lawful purchase, installation, use, resale, handling, storage, transportation, and disposal of the Products; (iii) you have used your own skill and judgment in selecting and you are solely responsible for the determination and selection of suitable Products for your contemplated use and the use contemplated by any third party to whom you resell the products; (iv) you are at least 18 years of age, and have the legal right and are authorized to purchase the Products; (v) you understand any and all hazards associated with the storage, use, handling and transportation of the Products; (vi) you are solely responsible for protecting and/or warning all parties who may be exposed to those hazards as a result of your use or resale of the Products; and (vii) if you are located in California, when you use our printed catalog to purchase Products, the Products are being purchased only for professional or commercial use, and not for personal or household use.

***Your Indemnification of Us.*** Your purchase, use and resale of the Products is at your own risk. To the fullest extent permitted by law, except to the extent caused by our negligence or willful misconduct, you agree to defend, indemnify and hold harmless H.W. Eckhardt Corporation and its respective officers, directors, employees, agents, contractors, vendors and suppliers from and against any liabilities, losses, damages, costs and other expenses (including court costs and reasonable attorneys' fees) arising or resulting (directly or indirectly) out of your (i) breach of any of the Terms and Conditions, (ii) negligence, misuse or other wrongful conduct related to a Product, or (iii) violation of any applicable law related to any Product. To the extent they are inconsistent with the U.S. federal Anti-Deficiency Act, the indemnification provisions in the Terms and Conditions will not apply to any sale made by us to a U.S. federal government agency to which the Anti-Deficiency Act applies.

Government Procurement

Items sold by us may not meet certain government procurement requirements (such as those imposed by the Buy American Act). Upon request, we will provide you with origin information. If you require other information or have other special needs, please contact us.

#### **Electronic Commerce / EDI**

If you purchase Products through our website, or by email, facsimile or an electronic data interchange or EDI system (collectively, "e-commerce"), you agree that (i) any contract of sale resulting from an e-commerce transaction is legally binding and enforceable, notwithstanding the provisions of any law relating to whether agreements must be in writing or signed by the parties to be bound thereby; and (ii) copies of our e-commerce records are admissible in any legal proceeding under the business records exception to the hearsay rule, the best evidence rule or any other rule of evidence, notwithstanding that such records were not originated or maintained in documentary form. As provided in the Uniform Commercial Code, we adopt as our signature on e-

commerce communications the electronic identification of H.W. Eckhardt Corporation affixed to or contained in each electronic record transmitted in connection with a transmission. In the event of a dispute, the business records maintained by us regarding your e-commerce purchases with us shall be deemed to be the governing records for purposes of establishing the terms of those purchases.

**Additional Terms Applicable to the Export of Products**

*U.S. Export Controls.* Our Products are subject to U.S. export control laws and regulations. You acknowledge and agree that you are responsible for and shall comply with all laws, regulations and orders of the United States applicable to the export of Products you purchase from us. Without limiting the foregoing, you represent and warrant as follows: (i) you are not designated on or associated with any party named on any of the restricted parties lists published by the U.S. government, including the Denied Persons List, the Entity List, the Unverified List of the Bureau of Industry and Security of the Department of Commerce, or the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the Treasury Department; (ii) you shall not engage in the export, re-export, diversion, transfer or other disposition of any Product in violation of any laws of the United States, including but not limited to laws administered by the Treasury Department and the Department of Commerce pursuant to which the United States maintains trade embargoes and sanctions against certain countries; (iii) you are purchasing the Products to be exported from the United States and imported to the destination identified in the documentation relating to your purchase of Products in compliance with the laws of the United States and that destination; (iv) you understand and acknowledge that a license or other authorization may be required from the Bureau of Industry and Security, the Office of Foreign Assets Control or other U.S. government agency before exporting or re-exporting Products from the United States; (v) unless otherwise expressly agreed by us in the documentation you receive from us relating to your purchase of Products, you are responsible for obtaining and paying for any licenses, permits or other authorizations required for exporting or re-exporting our Products; and (vi) all other costs associated with exporting the Products shall be your responsibility.

*Your Import of Products Into a Foreign Country.* We do not serve as the importer of Products into any country, except to the extent, and then only to the extent that we agree in the documentation the customer receives from us relating to the purchase of Products to serve as importer of record for certain sales to customers in Canada. In all other cases, when the Products you purchase from us are imported into another country, you are solely responsible for (i) compliance with all laws governing that country's importation process, (ii) obtaining and paying for all necessary licenses, permits, customs clearances and all other authorizations, and (iii) paying all applicable duties, tariffs and other taxes and government charges imposed by that country upon import, and any brokerage, storage, any other fees or costs associated with the import of the Products.

*Acknowledgement of Independent Contractor and Business Status.* In exporting the Products from the United States, importing them into another country, or reselling them following your purchase from us, you acknowledge that you are an independent contractor and that you shall not hold yourself out as an agent or otherwise cause others to believe that you are authorized to act on behalf of H.W. Eckhardt Corporation.

In addition, if you are located outside the United States, you represent and warrant to us that the Products are being purchased only for professional or commercial use, and not for personal or household use.

### **GENERALLY APPLICABLE TERMS**

#### Jurisdiction, Choice of Law and Jury Trial Waiver

The Terms and Conditions (including the breach, termination and validity thereof), sales of our Products, use of the H.W. Eckhardt Properties, any personal information you submit to us and any disputes arising out of or relating to any of the foregoing (i) shall be governed entirely by and interpreted in accordance with the laws of the State of Illinois and applicable U.S. federal law, without giving effect to conflict of law principles of any jurisdiction, and (ii) shall not be governed in any manner by the United Nations Convention on Contracts for the International Sale of Goods, which is hereby expressly excluded, or the laws of any jurisdiction outside the United States. Except as otherwise expressly provided respecting the resolution of any controversy or claim between H.W. Eckhardt Corporation and a party domiciled outside the United States, you irrevocably consent to the exclusive jurisdiction of the courts located in California in connection with any action by or against H.W. Eckhardt Corporation to which you are a party.

Proceedings to enforce the result of any such adjudication, however, may be brought in any applicable forum. TO THE FULLEST EXTENT PERMITTED BY LAW, WE BOTH KNOWINGLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY SUCH ACTION.

#### Resolution of International Disputes

Any controversy or claim between H.W. Eckhardt Corporation and a party domiciled outside the United States arising out of or relating to the Terms and Conditions, including but not limited to, the breach, termination or validity of the Terms and Conditions, sales of our Products, use of the H.W. Eckhardt Properties and any personal information submitted to us shall be determined and resolved exclusively by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. In connection with any such arbitration, the place of the arbitration shall exclusively be California, the language of the arbitration shall be English, and California law shall be applied to the dispute submitted to arbitration, without giving effect to any conflict of law principles of any jurisdiction. The arbitration award shall be final and binding, and judgment on the award may be entered and enforced in any court having jurisdiction over the parties. Except as may be required by law or for the purposes of entering, challenging or enforcing an arbitration award in a court having jurisdiction over the parties and subject matter, no party or its representatives may disclose the existence, content, or results of any arbitration hereunder, or any other matter relating to the arbitration or the award, without the prior written consent of all parties.

#### **Force Majeure**

We are not liable for any delay in or impairment of our performance caused in whole or in part by acts of God, labor disruptions, acts of war, terrorists, criminals, hackers or vandals, governmental decrees or controls, riots, epidemics and quarantines, communications disruptions, power failures, accidents, explosions, fires, inability to obtain or ship products, inability to obtain licenses or permits, shortages or inability to obtain supplies or raw materials, severe weather, natural disasters and catastrophic

events, or any other occurrence which is beyond our reasonable control in the conduct of business.

**Waiver**

The failure (with or without intent) of any party to insist upon the strict performance by the other party of any provision of the Terms and Conditions shall not be deemed to constitute a modification of, or a waiver of the right to insist at any time thereafter upon performance strictly in accordance with, any of the provisions of the Terms and Conditions. No waiver of any provision of the Terms and Conditions shall operate as a waiver of any other provision of the Terms and Conditions, and no waiver of any provision of the Terms and Conditions shall operate as a continuing waiver of that provision.

**Severability**

In the event that any provision of the Terms and Conditions is held illegal, invalid or unenforceable for any reason, that illegality, invalidity or unenforceability shall not affect the remaining provisions of the Terms and Conditions, in which event they shall be construed and enforced as if that illegal, invalid or unenforceable provision had never been inserted in them.

**Assignment; No Third Party Benefit**

No benefits or duties under the Terms and Conditions may be assigned without our prior written consent, except that a merger or consolidation of any party with another entity shall not constitute a violation of this provision. The Terms and Conditions are intended for the sole and exclusive benefit of the parties thereto and their respective permitted assignees thereunder. Nothing in the Terms and Conditions shall give any other person any legal or equitable right, remedy or claim under or in respect of the matters covered in them.

**Independent Relationship**

Nothing provided in the Terms and Conditions shall be deemed to create any relationship between us of employment, partnership, joint venture, agency or representation with respect to the use of the H.W. Eckhardt Properties or sales of Products by us.

Effective date: August 19, 2019