

Klingenberg USA, LLC

TERMS AND CONDITIONS OF SALE AND SERVICE

Status April 2020

1. Definitions

For purposes hereof: **(I) "Customer"** means the entity whose name appears on the face of the Order Confirmation; **(II) "Customer Contract"** means these Terms and Conditions of Sale and Service (the **"Terms and Conditions"**), together with the Order Confirmation; **(III) "Klingenberg US"** means Klingenberg USA, LLC, a North Carolina limited liability company **(IV) "Manufacturer"** means the manufacturer of the Products; **(V) "Order Confirmation"** means the written document issued by Klingenberg US to Customer that is styled as an "order confirmation" with respect to (A) subject Products to be sold by Klingenberg US to Customer and/or (B) the services to be performed by Klingenberg US for Customer; **(VI) "Products"** means the equipment or parts described on the Order Confirmation; and **(VII) "Services"** means the standard installation, maintenance and repair services described on the Order Confirmation. These Terms and Conditions are hereby incorporated by reference in, and made part of, any Order Confirmation.

2. Terms of Sale

Except as otherwise provided in an Order Confirmation, the sale of Products and provision of Services by Klingenberg US (as applicable) to Customer are governed by these Terms and Conditions. Customer hereby accepts the Customer Contract (without modification, deletion or addition), which acceptance may be evidenced by a writing, by performance (by Customer or Klingenberg US) or by other acknowledgment. All contrary or additional terms and conditions of purchase or sale stated in any purchase order or other commercial document (prepared by Customer or Klingenberg US) have been, and hereby are, rejected and have no force or effect.

3. Payment

Customer shall pay to Klingenberg US the amount listed on the Order Confirmation, in accordance with the terms and timing provided therein. The prices and fees set forth in the Order Confirmation do not include any services other than the Services, unless otherwise indicated. Further, any and all taxes, tariffs or similar charges (imposed by federal, state, local or other governmental authorities) on the sale, purchase, shipment, storage, use or consumption of the Products or on the provision of Services shall be paid or reimbursed by Customer, whether or not such taxes, tariffs or charges are listed or itemized therein.

4. Failure to Pay

If Customer fails to pay any amounts required within the time specified on the Order Confirmation, Klingenberg US, in its sole discretion and without prejudice to any other remedy it may have, at law or in equity, may do any one or more of the following: (i) postpone shipments of Products or Services, (ii) alter payment terms, (iii) terminate shipments or Services and (iv) charge interest on all overdue amounts at the rate of 1.5% per month, compounded monthly, or such lesser rate as is required by applicable law. Customer shall pay all of Klingenberg US's costs and expenses, including reasonable attorneys' fees, incurred in collecting any amount not paid when due hereunder. Customer may not hold back, delay or set-off any amounts owed to Klingenberg US in satisfaction of any claims asserted by Customer against Klingenberg US.

5. Delivery and Performance

Unless otherwise specified in the Order Confirmation, delivery terms for Products shall be Ex Works (EXW) (Incoterms 2010) at Klingenberg US's facility referenced in the Order Confirmation. The Products may be delivered in whole or in part, as determined by Klingenberg US. Klingenberg US will use reasonable diligence to meet the scheduled shipment dates provided in the Order Confirmation, which are estimates and not guarantees of when the Products will actually be shipped. Customer's acceptance of delivery shall constitute a waiver of any claim of breach for delay. Services shall be performed by Klingenberg US, as provided in the Order Confirmation, in a timely fashion and as required under the Customer Contract.

6. Title to Products

Upon delivery of the Products to a carrier by Klingenberg US, title and risk of loss with respect to the Products shall transfer to Customer, subject to a reservation of a security interest herein granted to Klingenberg US. Any loss or damage thereto, not caused by the negligence of Klingenberg US (including, without limitation, any loss or damage that occurs following delivery of the Products to a carrier), shall be borne by Customer. Customer shall obtain appropriate insurance (including fire, theft, damage and extended coverage), with Klingenberg US named as an additional insured (or its interests otherwise recognized and insured).

7. Product Nonconformity

Within ten (10) days after delivery of the Products in accordance with Section 5, Customer must give detailed written notice to Klingenburg US of any claim of Customer based upon the condition, quantity or grade of the Products sold and of any nonconformity with the Order Confirmation, all accompanied by evidence thereof reasonably requested by Klingenburg US. The failure of Customer to comply with this requirement shall constitute irrevocable acceptance by Customer of the Products delivered and shall bind Customer to pay Klingenburg US the full price of such Products.

8. Security for Payment

Customer hereby grants to Klingenburg US a purchase money security interest in the Products to secure the payment of the purchase price of the Products and all other amounts due to Klingenburg US from Customer. Customer agrees to execute and deliver to Klingenburg US such security agreements, financing statements and other documents as Klingenburg US may reasonably require to perfect, preserve and enforce such security interest.

9. Permits

It shall be the responsibility of Customer to obtain (and provide written confirmation and copies thereof to Klingenburg US, upon its request) any and all necessary permits, licenses and/or certifications required to install and operate the Products and provide the Services.

10. Minor Changes to Products and Services

Notwithstanding anything contained herein to the contrary, Klingenburg US may, without notice to Customer, make changes to the Products and Services which do not materially affect the standard specifications of the Products or intended result of the Services.

11. Integration of Products

Klingenburg US is not responsible for the satisfactory operation of the Products in conjunction with other equipment, or for any losses that may occur as a result of a failure of the Products to operate in conjunction with other equipment.

12. Warranties

Any and all warranties under a customer contract with respect to the products and services are solely those set forth below, subject to customer's continued compliance with the terms hereof.

I. Product Warranties

The same warranties manufacturer has made to Klingenburg US with respect to the products (the "manufacturer warranties") are hereby made by Klingenburg US to customer, in an identical form. Customer hereby

acknowledges receipt of (or electronic access to) such manufacturer warranties and acknowledges, and agrees with, the same. Klingenburg US makes no additional warranty with respect to the products, all warranty obligations hereunder being the replicated manufacturer warranties, as hereby applicable to Klingenburg US.

Such warranties of Klingenburg US are customer's exclusive warranties for the products. Klingenburg US specifically disclaims all other warranties of any kind.

II. Services Warranties

Klingenburg US shall use commercially reasonable efforts to provide the services required hereunder, in a good and workmanlike manner and in accordance with the terms and provisions hereof. Any warranty claim shall be made in writing by customer within 30 days after performance of a subject service by Klingenburg US, and Klingenburg US shall be afforded a reasonable time (not to exceed 90 days) to perform remedial services in response to a valid claim.

III. Warranty Disclaimers

Except as otherwise expressly set forth above, Klingenburg US makes no warranties of any kind, express or implied, with respect to any products or services provided hereunder, including, as applicable (a) any warranties of fitness for a particular purpose or merchantability, (b) any warranty alleged to arise from a course of dealing or trade usage and (c) any warranty against infringement of intellectual property rights of a third party.

VI. Warranty Claim Limitations

Under no such warranty shall Klingenburg US be responsible for any damages resulting from (A) ordinary wear and tear, (B) the negligence of Customer or (C) the failure of Customer to install or operate the Products in accordance with (1) the standards, specifications, directions or technical instructions prescribed by Klingenburg US or Manufacturer (including any voltage specification), (2) any Underwriters Laboratories (UL) standards or (3) any federal, state or local law, rule or regulation. Unless approved, in advance and in writing, by Klingenburg US, Customer shall be responsible for the costs and charges associated with any work performed during the applicable warranty period by anyone other than Klingenburg US.

V. Warranty Exclusions

No warranty hereunder covers (A) items or components consumed during normal operation, (B) software installed in or with respect to the Products (unless covered by the warranties hereunder), (C) damage or defects arising from installation or use under unusual circumstances, (D) use exceeding specifications, (E) abuse, unauthorized repair, alteration or moving of the Products or (F)

lack of proper maintenance. The warranties hereunder shall terminate if Customer (i) makes any modifications to the Products, (ii) assigns any of its rights hereunder to any other party or (iii) defaults on making any payment for the subject Products or Services. In addition, the warranties hereunder do not cover damage caused by natural causes, acts of God or acts or occurrences unrelated to use of the Products or Services in the ordinary course, such as fire, storm, flood, terrorist activity or riots.

VI. No Other Authorized Warranties

Unless otherwise expressly set forth herein, any descriptions, representations or other information provided in catalogs, advertisements or other promotional materials (or related) by any representatives or sales agents of Klingenburg US, or by third parties, shall not be binding upon Klingenburg US.

13. Safety Measures

Customer shall (i) follow all procedures and warnings, if any, recommended by Klingenburg US or Manufacturer, at any time before or after sale, in conjunction with operating or using the Products, (ii) ensure that all persons authorized to use the Products have been adequately trained, (iii) not remove any warning labels or safety devices and (iv) immediately cease use of the Products in the event a safety device becomes damaged or removed. Should Customer fail to do any of the above, or if Customer shall fail to maintain the Products in accordance with Klingenburg US and Manufacturer recommendations, Customer will indemnify and hold Klingenburg US harmless from, and pay for, any loss, damage, liability or obligation (including reasonable attorneys' fees) incurred by Klingenburg US, directly or indirectly, as a result of such failure.

14. Remedies upon Breach

If either party breaches a Customer Contract, the other party shall be entitled to all remedies available to that party at law or in equity, subject to any limitations or qualifications hereunder.

In the event of an alleged breach, the non-breaching party shall provide written notice of the same to the breaching party, within 30 days after the alleged breach, and (if the alleged breach is other than a failure to make a required payment) shall afford the breaching party a reasonable time to cure such breach, not to exceed ninety (90) days.

15. Limitation of Liability

I. Time limit

Any recovery action by customer under, or relating to, a customer contract must be commenced within twelve (12) months after such cause of action has accrued.(ii)

II. Excluded liabilities

In no event shall Klingenburg US be liable to customer or to any third party, under or related to a customer contract, for any (a) loss of use, revenue or profit; (b) loss of data or diminution in value of any asset or relationship, (c) consequential, incidental, indirect, exemplary, special or punitive damages or d) injury to person or property (whether any of the foregoing (1) arises out of breach of contract, tort (including negligence) or otherwise, (2) was foreseeable, (3) was announced to Klingenburg US as a possibility or (4) is unsatisfactorily addressed by permitted remedies hereunder).

III. Monetary recovery limit

In no event shall the aggregate monetary value of Klingenburg US liability (pursuant to any remedies under a customer contract) arising out of or related to the customer contract, whether due to breach of contract, warranty claim, tort (including negligence) or otherwise, exceed the amounts actually paid to Klingenburg US by customer, with respect to the subject products or services, under a customer contract, during the one (1) year period preceding the event giving rise to the claim.

16. Cancellations

Any cancellation of a Customer Contract must be in writing and signed by Customer and Klingenburg US, conditions of which shall include Customer's agreement to pay Klingenburg US, immediately, all amounts otherwise due and payable under the Customer Contract and all reasonable costs and expenses incurred by Klingenburg US in connection with cancellation of the Customer Contract.

Notwithstanding the foregoing, Klingenburg US may cancel a Customer Contract, unilaterally, as of the date of notice thereof from Klingenburg US (and, accordingly, suspend any further deliveries or performance of Services hereunder and recover the amounts due and payable and costs and expenses referenced above), if (i) any proceedings in bankruptcy, insolvency, receivership or liquidation are taken against Customer; (ii) Customer makes an assignment for the benefit of creditors or commits an act of bankruptcy or insolvency; (iii) the Products is seized or confiscated under any legal process or (iv) Klingenburg US, in good faith, believes that the ability of Customer to pay or perform any provision of the Customer Contract is impaired, or that the Products are in danger of being lost, or that any of the events mentioned above is about to occur.

17. Excused Non-Performance

Klingenburg US shall not be liable for damages of any kind caused by delays in shipment, delivery or any other non-performance of a Customer Contract, directly or

indirectly resulting from, or contributed to by, any circumstances beyond Klingenburg US's control, including, without limitation, acts of God; riots; wars or national emergencies; terrorist activity; labor disputes of any kind however caused; embargoes; non-delivery by suppliers; inability to obtain supplies through normal sources of supplies; or delays of carriers or postal authorities. The occurrence of any such circumstance shall operate to extend Klingenburg US's time of performance hereunder for a period not less than the period of such delay or effect. In the event of any such circumstance, Klingenburg US may allocate its production and deliveries among its customers as it determines in its sole discretion.

Further, the pricing for Products and Services in any Customer Contract shall be automatically adjusted, retroactively or prospectively, to eliminate any adverse effects to Klingenburg US of imposition of tariffs or other governmental restrictions, prohibitions or diversions.

18. Confidential Information

Both Customer and Klingenburg US shall maintain as confidential and shall not disclose, copy, or use for purposes other than in conjunction with performance under a Customer Contract (i) the terms of the Customer Contract or (ii) any information disclosed by the other party (or its affiliates) that relates to such party's (or such party's affiliates) business or affairs and that would be understood by a reasonable person to be confidential ("**Confidential Information**"). Each party agrees to protect Confidential Information with the same degree of care it exercises to protect its own Confidential Information and to prevent the unauthorized, negligent, or inadvertent use, disclosure or publication thereof. Breach of such confidentiality obligations may cause irreparable damage, and therefore, the injured party shall have the right to equitable and injunctive relief, in addition to any other legal remedies. Notwithstanding the foregoing, Customer and Klingenburg US may share Confidential Information with their respective affiliates as each determines is reasonably necessary to perform under a Customer Contract.

19. Tooling

Any and all tooling, equipment and devices used by Klingenburg US in providing the Services shall be considered the sole and exclusive property of Klingenburg US ("**Tooling**"), and Customer shall not have any interest in or rights to any of the Tooling (and shall return any Tooling to Klingenburg US on demand).

20. Governing Law; Arbitration

A Customer Contract shall be governed by the laws of the state of North Carolina, without reference to its conflict of laws provisions. Any controversy, claim or dispute arising out of or relating to a Customer Contract (including,

without limitation, questions concerning whether a matter is required to be submitted to arbitration under this Section) shall be determined by binding arbitration; provided, however, that any party intending to institute arbitration proceedings must first notify in writing the other party of its intent to initiate such proceedings. Any demand for arbitration may not be made until after the date twenty-one (21) days from the date such notice is sent. All arbitration proceedings between the parties hereto (i) shall be administered by the office of the American Arbitration Association ("AAA") in Charlotte, North Carolina, (ii) shall be held in Charlotte, North Carolina and (iii) shall be conducted in accordance with the commercial arbitration rules of AAA in force as of the date demand for arbitration is made. The parties agree to abide, and be bound, by all decisions and awards rendered by the arbitrator. Judgment upon such decisions and awards may be entered in any court having jurisdiction. Notwithstanding the laws of North Carolina, the arbitrator(s) shall in no event award damages in excess of those provided and limited hereunder.

21. Miscellaneous

A Customer Contract constitutes the complete and exclusive statement of the terms and conditions of the sale of Products and provision of Services. There are no other promises, conditions, understandings, representations or warranties of any kind with respect to the subject matter thereof. Except as provided herein with respect to automatic adjustments, the Customer Contract may be amended, modified or supplemented only by a writing signed by Klingenburg US and Customer. The failure of Klingenburg US to enforce any right hereunder will not be construed as a waiver of its right to performance in the future. Any provision of the Customer Contract that is, or is deemed to be, unenforceable in any jurisdiction shall be severable from the Customer Contract in that jurisdiction without, in any way, invalidating the remaining provisions of the Customer Contract, and that unenforceability shall not make that provision unenforceable in any other jurisdiction. The rights that accrue to Klingenburg US by virtue of the Customer Contract shall inure to the benefit of its successors and assigns. All requests, instructions and notices from one party to the other must be in writing and may be given via certified mail or facsimile transmission to the address of the parties shown on the Order Confirmation.

22. Survival

The rights and obligations of the parties under a Customer Contract that, by their nature, would be required to continue beyond the termination of the Customer Contract (to carry out their full intents and purposes) shall survive such termination.