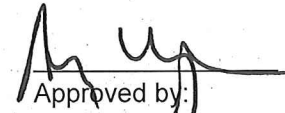


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**HUBER+SUHNER, Inc.**  
**GENERAL TERMS AND CONDITIONS OF SALE**

  
Approved by:  
General Manager

**1. GENERAL**

- 1.1. These general terms and conditions of sale ("General Conditions") are applicable to all sales of products ("Products") and services ("Services") by HUBER+SUHNER, Inc. ("H+S") to the buyer ("Customer"). CUSTOMER'S PLACEMENT OF A PURCHASE ORDER FOR PRODUCTS OR SERVICES SHALL CONSTITUTE CUSTOMER'S ACCEPTANCE OF THESE GENERAL CONDITIONS. **H+S hereby objects to and rejects any additional or conflicting terms proposed by Customer or contained in any purchase order (or other document) from Customer, regardless of any knowledge H+S may have of such terms.** In no event shall any conflicting or additional terms set forth in Customer's purchase order (or any other document) apply to H+S' sale of Products and/or Services to Customer, unless specifically agreed to by H+S in a signed writing.
- 1.2. H+S shall have no obligation to sell any Products or Services to Customer unless and until H+S has issued an order acknowledgement or similar document expressly confirming H+S' acceptance of Customer's purchase order. Thus, the parties' agreement regarding the sales of Products and/or Services shall consist solely of (i) these General Conditions; (ii) provisions set forth in an order acknowledgement or similar document issued by H+S; (iii) Product or Service description and number, the price, units of Products or Services, and delivery dates and shipment instructions set forth in Customer's purchase order, provided such terms are accepted in H+S' order acknowledgement; and (iv) any other provisions expressly agreed to between H+S and Customer. Such documents are collectively referred to herein as this "Agreement."
- 1.3. The use of an electronic signature corresponding to the current level of technology and in accordance with applicable law is a permissible substitute for a hand written signature.
- 1.4. Should a provision of these General Conditions be judicially determined to be unlawful, invalid or unenforceable, (i) such provision shall be deemed severed from the General Conditions and shall be replaced by a valid provision which approximates as close as possible the intent of the parties; and (ii) the remaining provisions of these General Conditions shall remain in full force and effect.

**2. SCOPE OF SUPPLIES AND SERVICES**

- 2.1. The Products and Services of H+S are identified in H+S' order acknowledgement and in appendices thereto. H+S shall be entitled to make any changes in such Products and Services which lead to improvements provided such changes do not result in a price increase.

- 2.2. With regard to Products consisting of cable, H+S reserves the right to over- or under supply up to 10% of the ordered volume. If Customer requires a specific, minimum quantity of cable, Customer must prominently state in its purchase order that it requires such a specific minimum quantity of cable.
- 2.3. H+S' reserve the right to manufacture or source material from approved suppliers, including alternate H+S manufacturing organizations without Customer consent.

### **3. DRAWINGS, TECHNICAL DOCUMENTS, CONFIDENTIAL INFORMATION AND TOOLS**

- 3.1. Unless otherwise agreed upon by H+S in a signed writing, statements made in brochures, catalogues, technical documents and the like regarding the Products and Services are not binding.
- 3.2. Customer agrees that any information it obtains about H+S (other than information that is issued by H+S in its published, publicly available materials and on the public portions of its website) is H+S' confidential information ("Confidential Information") irrespective of whether such information is disclosed to Customer in oral, written or visual form. Confidential Information includes without limitation technical drawings, blueprints, performance data, benchmarking data, engineering analyses, pricing, product development plans, vendors, and ideas, inventions, concepts, techniques, and know-how used by H+S in its manufacturing processes. Customer agrees that it will maintain the Confidential Information in strict confidence and will not disclose or disseminate it to any third party without H+S' express, prior written consent. Customer agrees that it will use the Confidential Information only in connection with its purchase and use of Products and Services. Upon H+S' request, Customer will return to H+S all written or descriptive matter which contain any Confidential Information. In the event of Customer's breach of this clause, H+S shall be entitled to immediately pursue equitable relief, including without limitation, an action for a temporary or permanent injunction.
- 3.3. Tools and molds of all kinds remain in all cases the sole and exclusive property of H+S, except for those provided to H+S by the Customer.
- 3.4. Tools and molds provided by Customer to H+S shall be subject to such additional terms and conditions as the parties may expressly agree to in writing; provided, however, that the cost for servicing and maintaining these tools and molds shall be the responsibility of the Customer and the cost for storing these tools and molds is the responsibility of H+S. Notwithstanding the foregoing, in no event shall H+S have any responsibility with respect to such tools and molds once five (5) years have elapsed from the date of H+S' last shipment of the applicable Product to Customer.

### **4. REGULATIONS IN FORCE IN THE COUNTRY OF DESTINATION AND SAFETY DEVICES**

- 4.1. The Customer shall, either prior to or at the time it issues a purchase order, identify in writing to H+S all laws, rules, regulations, and orders applicable to the Products and Services ordered by Customer, including without limitation, those relating to environmental issues, health and safety.
- 4.2. Unless otherwise agreed upon by the Parties in writing, the Products and Services shall conform to such laws, rules, regulations and orders of which H+S has been specifically informed in accordance with Section 4.1 above. Additional or other safety devices shall be supplied only to the extent expressly agreed to by the parties in writing.

### **5. PRICES**

- 5.1. Unless otherwise agreed upon all prices shall as specified by H+S in its order acknowledgement and shall be net Ex Works (Incoterms, latest issue), H+S' facility, including standard packaging in U.S. Dollars without any deductions whatsoever.



Any and all additional charges, such as, but not limited to, freight charges, special packaging requirements, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by the Customer.

Likewise, the Customer shall be solely responsible for the payment of any and all taxes, fees, levies, customs duties and the like which are due as a result of, or are levied out of or in connection with the sale of Products and Services by H+S, and Customer shall indemnify H+S in the event H+S is liable for any such payments as a result of Customer's failure to pay.

- 5.2. H+S reserves the right to increase the prices otherwise agreed to in case the wage rates or the raw material prices increase between the date H+S accepts Customer's purchase order and the date of delivery. In determining the amount of any such increase, H+S may rely on a publicly available inflation rate index selected by H+S (for wage rates) and a publicly available commodity price index selected by H+S (for raw materials prices).

In addition, H+S shall have the right to make a reasonable price adjustment if:

- a) the delivery time has been extended due to any reason other than a cause solely attributable to H+S;
- b) the nature or the scope of the agreed Products or Services has changed; or
- c) any Products or Services have undergone changes because any documents furnished by the Customer were not in conformity with the actual circumstances, or were incomplete, or the Customer failed to comply with Section 4.1 above.

## 6. TERMS OF PAYMENT

- 6.1. Unless otherwise agreed upon, payments shall be made by the Customer within 30 days after the date of H+S' invoice, net, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
- 6.2. The due date for payment shall not be extended if transport, delivery, erection, commissioning or Customer's possession of the Products or Services is delayed or prevented due to reasons beyond H+S' control, or if unimportant parts are missing, or if post-delivery work may nevertheless be carried out by Customer even though delivery of the Products or Services has not yet occurred.
- 6.3. If Customer fails to pay, when due, the advance payments, if any, as provided or referenced in Customer's purchase order or the order acknowledgment, H+S may, at its option, terminate the order, seek damages for Customer's failure to complete the purchase, and shall have no further obligation to Customer.
- 6.4. If Customer fails to make any payment when due, Customer shall be liable, without reminder, for interest with effect from the date on which the payment was due. The annual interest rate charged will correspond to the "Prime Rate" published in the Wall Street Journal at the time such payment was due, plus two percent (2%) or the maximum allowed by applicable law. Payment of interest does not release Customer from its obligation to make payments on the agreed dates or from any obligation to pay damages which might exceed the interest due.

## 7. SECURITY AGREEMENT

Customer hereby grants to H+S a continuing purchase money security interest in all Products sold to Customer as security for the due and punctual performance by Customer of its obligations hereunder. Customer agrees to execute such documents to evidence and perfect such security interest as H+S may require. Customer authorizes H+S to file all financing statements, continuation statements and other documents necessary or desirable to establish, perfect, maintain, preserve and enforce H+S' security interest in the Products sold.

## 8. DELIVERY TIME

- 8.1. All deliveries of Products are Ex Works (Incoterms, latest issue), H+S' facility, unless otherwise stated in the applicable order acknowledgement. It is acknowledged and understood that if the purchase order and/or the order acknowledgement contain an estimated delivery date, it will be necessary for Customer and H+S to confer and agree on a specific delivery date. Unless otherwise agreed to in writing, H+S will be deemed to have met its delivery responsibilities if, on or before the delivery date, H+S has sent a notice to the Customer informing it that the Products are ready for shipment, and in the case of Services that H+S is ready to fulfill its obligation to provide Services. H+S may make partial deliveries.
- 8.2. H+S' compliance with its delivery obligations is conditioned on Customer's continued fulfillment of all of its obligations, including without limitation payment obligations and cooperation obligations.
- 8.3. In addition to any other rights and remedies available to H+S, H+S shall have the right to extend the time for delivery for a period that is reasonable under the circumstances, in the event that:
  - a) the information required by H+S for performance of this Agreement is not received by an agreed to date, or if the Customer subsequently changes any such information;
  - b) H+S is prevented or hindered from performing based on circumstances beyond its reasonable control, including without limitation, epidemics, war, acts of terrorism, revolution, strikes or other labor conflicts, late or deficient delivery by subcontractors of raw materials, semi finished or finished products, the need to scrap important work in process, official actions or omissions by any governmental authorities or public bodies, natural catastrophes, acts of God; or
  - c) the Customer fails to perform any of its obligations under this Agreement in a timely manner, including without limitation if the Customer fails to make payment for the current or for previous orders in a timely manner.
- 8.4. Any failure of H+S to deliver the Products or Services on a timely basis shall not constitute a breach of the parties' agreement, shall not entitle Customer to terminate the parties' agreement and shall not entitle Customer to any damages for such failure, and Customer's sole remedy for such failure shall be to cancel the order at issue, unless such failure results from the willful misconduct or gross negligence of H+S.

## 9. RISK OF LOSS

- 9.1. Title to the Products and risk of loss passes to Customer in accordance with standard Ex Works terms.
- 9.2. If shipment is delayed at the request of Customer, at the fault of Customer or due to reasons beyond H+S' reasonable control, the risk of the loss shall pass to Customer at the time originally agreed to for shipment. From and after such time, the Products shall be stored and insured on the account, at the expense of, and at the risk of Customer.

## 10. FORWARDING, TRANSPORT AND INSURANCE

- 10.1. Customer's purchase order shall specify any requirements regarding forwarding, transport and insurance. All shipments shall be Ex Works (Incoterms, latest issue) at Customer's expense and risk. Objections regarding forwarding or transport shall upon receipt of the Products or of the shipping documents be immediately submitted by the Customer to the last carrier.
- 10.2. In no event shall H+S be deemed to assume any liability in connection with any shipment. Customer shall be solely responsible for procuring insurance against all risks.

## 11. INSPECTION AND ACCEPTANCE OF PRODUCTS AND SERVICES

- 11.1. According to its own practices, H+S shall inspect the Products before shipment, and shall inspect its work after fulfilling the Services. If the Customer requests further testing, this has to be specially agreed upon in writing by the parties and paid for by the Customer.
- 11.2. The Customer shall inspect the Products and Services including partial deliveries thereof within a reasonable period following arrival at Customer's premises (or completion of the Services as the case may be) but in any



event within ten (10) days of such arrival or completion, and shall immediately notify H+S in writing of any failure of the Products or Services to conform to the requirements of this Agreement. If the Customer fails to provide such notice within such time period, the Products and Services, including partial deliveries of the Products and partially completed Services, shall be deemed to have been accepted.

- 11.3. After having been notified of any such failures, H+S shall use commercially reasonable efforts to remedy such failures within a reasonable period of time, and Customer shall cooperate with H+S' efforts to do so. After remedying such failures, further acceptance testing may be performed by Customer in accordance with Section 11.2 above. If H+S is not able, despite commercially reasonable efforts, to remedy any such failures, H+S shall replace the Products at issue or reperform the Services at issue, which shall be H+S' sole liability, and Customer's sole remedy, for H+S' failure to remedy any such failures.
- 11.4. Acceptance shall be automatically deemed to have occurred without further action by Customer as soon as Customer commences use of the Products or Services (including partial delivery of Products or partial delivery of Services).
- 11.5. Deficiencies of any kind in Products or Services including partial deliveries of Products and partial completion of Services shall not entitle the Customer to any rights or claims other than those expressly stated in these General Conditions.

## 12. WARRANTY AND LIABILITY

### 12.1. Warranty Period

The warranty period applicable to the Products and Services ("Warranty Period") shall, in the case of Products, be a 12-month period commencing upon shipment of the Products, and in the case of Services, shall be a 12-month period commencing upon H+S' completion of the Services. In the event shipment of the Products is delayed by Customer or by reasons beyond H+S' reasonable control, the Warranty Period shall end on the earlier of 12 months from the date of shipment or 18 months from the date that H+S notifies Customer that the Products are ready for shipment.

With respect to any replacement or repaired parts provided by H+S pursuant to Section 12.3 below, the Warranty Period shall be the original Warranty Period applicable to the Products that were the subject of such replacement or repairs. The Warranty Period will be deemed ended, and H+S shall have neither liability nor obligation to provide any remedy in the event:

- i. Customer or a third party performs any repairs or modifications to the Products without H+S' prior written authorization;
- ii. Customer fails to mitigate any damage resulting from a failure of any Product or Service to conform to its warranties; or
- iii. Customer fails to give H+S timely notice of a failure of a Product or Service to conform to its Warranties, or fails to give H+S the opportunity to remedy any breach of warranty.

### 12.2. Warranty

During the Warranty Period, H+S warrants that (i) the Products will be free from defects in materials and workmanship and will substantially conform to any H+S specifications referenced in the order acknowledgement; and (ii) the Services will be performed in a good and workmanlike manner and will substantially conform to any H+S specifications referenced in the order acknowledgement.

### 12.3. Remedy For Breach Of Warranty

In the event of any breach by H+S of any warranty set forth in Section 12.2 above, H+S shall, at its sole option, either replace or repair the Products, or repair or re-perform the Services. Such remedies shall be H+S' sole liability and Customer's sole remedy for breach of any warranty set forth in Section 12.2 above. Customer agrees to cooperate with H+S in any effort it makes to supply the foregoing remedies. Any repair or re-performance performed at Customer's facility shall be at the expense of Customer.

#### 12.4. Exclusions from Warranty

The warranties set forth in Section 12.2 above does not cover any condition(s) (i) which cannot be proved to have its origin in defective materials or workmanship; (ii) which results from normal wear and tear, electric overload, environmental pollution, electromagnetic disturbances (provided, however, that with respect to Products specifically designed to protect against lightning electromagnetic pulses, the warranties will cover conditions which result from lightning electromagnetic pulses, but will not cover conditions which result from lightning electromagnetic pulses which exceed H+S' design parameters for such Products or other electromagnetic disturbances), improper maintenance or repair, neglect, failure to assemble, install or operate the Products in strict conformity with instructions provided by H+S, misuse, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, interference with other products, systems or services; or (iii) any other cause beyond H+S' reasonable control.

#### 12.5. Products and services of Sub-Contractors

For products and services supplied by sub-contractors prescribed by the Customer, H+S assumes liability only to the extent of such sub-contractor's liability to H+S.

#### 12.6. No other warranties

THE WARRANTIES SET FORTH IN SECTION 12.2 ABOVE ARE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NO COURSE OF DEALING AND NO PRODUCT DESCRIPTION SHALL BE DEEMED A WARRANTY OF ANY GOODS DELIVERABLE BY H+S.

#### 12.7. The warranty rights and remedies set forth herein cannot be assigned to any third party without the prior written approval of H+S.

#### 12.8. The Customer shall comply with H+S procedures then in effect concerning the return of Products under warranty or for repair (Repair and Replacement Procedure).

### 13. SOFTWARE

Any software delivered by H+S shall remain the property of H+S or its licensors. To the extent permitted by any of H+S' licensors, the Customer is granted a personal, non-exclusive, non-transferable license to use the software in direct connection with the Products delivered with it. The Customer recognizes the confidential nature of the software, and agrees not to disclose it to any third party.

### 14. TERMINATION AND BREACH

#### 14.1. In the event H+S breaches any material provision of this Agreement, which breach is not cured by H+S within thirty (30) days of Customer's delivery of written notice of such breach, then (unless such matter is covered by a remedy or other provision provided above) Customer's sole remedy and H+S' sole liability shall be as follows: (i) Customer shall be entitled to terminate its order for the purchase of the applicable Products and Services; and (ii) Customer shall be entitled to a refund of any amounts paid for Products or Services not delivered.

#### 14.2. In the event that the Customer terminates this Agreement for any reason prior to purchasing and paying for the full quantity of Products and Services required to be purchased hereunder, or in the event that the Customer fails for any reason (other than H+S' failure to deliver or other material breach of this Agreement) to purchase and pay for such Products or Services, then (a) if the Products not so purchased or paid for have been produced by H+S prior to such termination or expiration and are not salable to other customers within a reasonable time (as determined by H+S in its sole discretion), Customer will pay H+S an amount equal to the entire contract price thereof less salvage value recoverable by H+S, (b) in all other cases, Customer will pay H+S, as liquidation damages, an amount equal to fifty percent (50%) of the purchase price for the quantity of Products or Services that the Customer was required to, but did not purchase, or (c) H+S may take any other actions or pursue any other remedies at law or equity available under applicable law.



- 14.3. Without limiting H+S' other rights and remedies available under applicable law, H+S may suspend or terminate performance and delivery, if: (a) there is a change in the control or management of Customer; (b) Customer ceases to conduct its operation in the normal course of business; (c) Customer becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; or (d) Customer makes an assignment for the benefit of credits, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Buyer's property.

## **15. EXCLUSION OF FURTHER LIABILITIES**

THE LIABILITY OF H+S WITH RESPECT TO A CLAIM OF ANY KIND, WHETHER AS TO QUALITY OR AMOUNT OF PRODUCTS OR SERVICES DELIVERED OR FOR A NON-DELIVERY OF PRODUCTS OR SERVICES, SHALL NOT EXCEED THE INVOICE PRICE OF THE QUANTITIES OF PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE. THIS LIMITATION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. IN NO EVENT WILL H+S BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST SAVINGS, COST OF COVER, INCIDENTAL DAMAGES OR OTHER CONSEQUENTIAL DAMAGES. The foregoing limitations on liability shall not apply to injury or death to persons or damage to personal property resulting from H+S' gross negligence or willful misconduct.

## **16. PARTIAL SUPPLIES AND PARTIAL SERVICES**

The acceptance and warranty provisions set forth above shall apply solely to the specific Products and Services (or features thereof) that fail to conform to the requirements of this Agreement.

## **17. INDEMNIFICATION**

Customer assumes all responsibility and liability for injury or damages resulting from its handling, possession, use or sale of Products or Services supplied hereunder, including, but not limited to any injury or damage resulting from the use of Products in Customer's operations or in combination with other substances or products, and agrees to hold harmless, defend and indemnify H+S, its officers, directors, its employees and agents from and against all claims, losses, liabilities and expenses (including attorney's fees and other litigation or settlement costs) arising out of such handling, possession, use or sale. The foregoing duty of Customer to hold harmless, defend and indemnify H+S shall not apply to the extent such claim, loss, liability or expense results from the willful misconduct or gross negligence of H+S.

## **18. APPLICABLE LAW/VENUE**

- 18.1. This Agreement shall be governed by the substantive law of the State of North Carolina, without regard to the conflicts of laws rules thereof. The applicability of the UN Agreement dated April 11th, 1980 for contracts governing the International Purchase of Goods is excluded.
- 18.2. The parties agree that the state courts of North Carolina, or the United States District Court for the Western District of North Carolina shall constitute the sole and exclusive judicial forum and venue and, therefore, shall have sole and exclusive jurisdiction over the adjudication and resolution of any and all disputes or controversies arising out of or relating to this Agreement or the purchase and sale of Products or Services.

## **19. WAIVER**

H+S' failure at any time to require performance of Customer of any provision of this Agreement shall in no way affect H+S' right to require such performance at any time thereafter. H+S' failure to enforce its rights as to any violation of any provision (or part thereof) of this Agreement shall

not be deemed a waiver or abandonment of its right to enforce its rights as to any other violation of the same or any other provision.

## **20. EXPORT CONTROL**

- 20.1. Customer agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et. seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-744; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Customer agrees that it will not transfer any export controlled Product, data, or Services, to include transfer to foreign persons employed by or associated with, or under contract to Customer or Customer lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.
- 20.2. H+S agrees to notify Customer if any Product sold under this order is restricted by export control laws or regulations.
- 20.3. Customer shall immediately notify the H+S Designated Official if Customer is, or becomes, listed in any Denied Parties list or if Customer's export privileges are otherwise denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency.
- 20.4. If Customer is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Customer represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with ITAR.
- 20.5. Customer shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Customer, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause of the Agreement.