

KOESTER ASSOCIATES (SELLER) – GENERAL TERMS & CONDITIONS

1. Conflicting Terms. These General Terms & Conditions, any accompanying quotation (“Quote”), and Koester Associates Repair Warranty constitute the entire agreement (“Agreement”) relating to the sale of “Products” (which includes but is not limited to, all components, controls, equipment, parts, products, materials and services) by Seller to Buyer. Any terms and conditions contained in Buyer’s purchase order, request for quotation or any other document generated by Buyer which are different from, in addition to, or vary in any way from this Agreement shall not be binding upon Seller unless agreed to in a separate, issue-specific, written agreement signed by a corporate officer of Seller.

2. Delivery. Delivery terms are F.O.B. Seller’s location in Canastota, NY. For standard Products, dates of delivery are determined from the date of Seller’s acceptance of any order by Buyer and are only estimates and not a guarantee of a particular date of delivery. For custom manufactured Products, dates of delivery are estimates based on the date that such Products are approved and released for manufacture. If delivery is deferred at Buyer’s request, payment of the contract price shall become due when Buyer is notified that Products are ready for pickup/shipment. Seller is not responsible for damage or loss in transit. All risk of loss or damage to the Products passes to Buyer as the Products are loaded onto the carrier. Buyer must obtain adequate insurance to cover the Products from the time risk of loss has passed from Seller.

3. Inspection. Buyer shall notify Seller within 48 hours of delivery of any damage to the Products or of any other complaint whatsoever Buyer may have concerning delivery. Buyer shall also note any damage on delivery tickets and shipping receipts at the time of delivery. Buyer’s failure to make such timely complaints and note any damage shall be deemed an acceptance of the Products and a waiver of any claims concerning delivery.

4. Delays. Seller shall not be responsible for delays caused by acts or omissions of Buyer, its employees, agents, suppliers or vendors, acts of God, inclement weather, strikes, lockouts, boycotts, or other labor union activities, extra work ordered by Buyer, acts of public enemy, war, terrorism, riots or civil commotion, inability to secure materials through regular recognized channels, pandemic or epidemic, government orders, imposition of government priority or allocation of materials, failure of Buyer to make payment when due, delays caused by inspections, changes ordered by inspectors, or other causes beyond Seller’s reasonable control.

5. Change of Law or Regulations. Any change of laws, regulations, or another governmental requirement that causes an increase in the cost of producing or delivering the Products or which occurs after Seller accepts an order is not in the price. Any new or additional tariffs, duties, or surcharges are not included in the price of the Products and are the responsibility of the Buyer. Seller reserves the right to require that the Buyer pays for any new or increased tariff, duty, or surcharge prior to the delivery of the Products. Buyer assumes the risk of changes in the law, regulation, or other governmental requirements; Seller does not assume the risk of new or higher tariffs, duties, or surcharges.

6. Cancellation. Buyer may only cancel an order with the written consent of Seller and at Seller’s sole discretion. If such consent is granted by Seller, Buyer shall pay Seller for (A) all restocking, reshipping and return charges which may be incurred, (B) the actual cost of any components, equipment, parts or materials, if such components, equipment, parts or materials were made to order or otherwise customized for Buyer for the order, or cannot be returned, and (C) all services and work performed by Seller as of the date on which cancellation is approved. Seller shall have the absolute right in its sole discretion to cancel this Agreement without penalty upon a breach thereof by Buyer, Buyer’s failure to timely make any payment required by this Agreement, the pending or actual insolvency or bankruptcy of the Buyer, if it determines that any errors in estimating or design have been made, or if any unforeseen hazards or conditions arise or are discovered, or for any other reason whatsoever.

7. Returns. Buyer may only return Products with the prior written consent of Seller, at Seller's sole discretion. Seller accepts no responsibility for Products returned without prior written authorization. Products must be returned in a saleable condition within 30 days from the date of invoice. Products will not be accepted for return if they are damaged or used, custom manufactured for the Buyer, not in their original packaging (unopened), not purchased from Seller or otherwise incapable of being resold by Seller. When Products are authorized to be returned for any reason other than pursuant to Seller's Repair Warranty, the amount of credit may be subject to a restocking charge of up to 30%. Returned Products must be sent freight prepaid to the appropriate address indicated by Seller. Any unauthorized returned Product will be returned at Buyer's expense. If a Product is returned without such consent, it shall thereupon become the property of Seller.

8. Payment. Unless otherwise agreed to in writing, terms of payment are Net 30 days from the date of invoice with a 1.5% per month additional charge on the unpaid balance, subject to acceptance by our credit department. No provision for retainage is included in Seller's Quote. If Seller agrees to payment terms that include retainage, Buyer agrees to pay Seller its pro rata share of interest on retained funds as part of the final payment. Buyer agrees to pay Seller's actual costs, expenses, and attorneys' fees incurred in collecting any past due and unpaid account balances.

9. Title and Lien Rights. Products delivered to Buyer will remain personal property, regardless of how they are installed or affixed to any realty or structure. After delivery to Buyer, Seller will have all such rights, including security interests and liens, in the equipment as lawfully may be conferred upon Seller by contract under any applicable provision of law. To secure payment, Buyer grants to Seller a security interest in the Products until they are paid for in full. Buyer agrees to cooperate fully with Seller in the filing of any UCC financing statements or other documents necessary to perfect such security interests and liens. If Buyer defaults in its obligations before the Products have been fully paid for, Seller may take any actions permitted by law to protect its interests, including, where permissible, repossession of the Products.

10. Responsibility. It is Buyer's sole responsibility to insure that all Products related to this sale are compatible and compliant with Buyer's systems. Seller is not responsible for insuring system compatibility or compliance of any Products unless expressly stated otherwise in the Quote or agreed to in a separate, issue-specific, written agreement signed by a corporate officer of Seller.

11. Warranty. Seller's Repair Warranty, incorporated herein by reference, sets forth all warranty obligations, rights, and limitations of Buyer and Seller.

12. LIMITATION OF LIABILITY. SELLER'S RESPONSIBILITY OR LIABILITY FOR DEFECTIVE PRODUCTS/SERVICES, BREACHES OF CONTRACT OR ANY OTHER CLAIMS WHATSOEVER IS STRICTLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCTS/SERVICES OR THE PURCHASE PRICE OF SUCH PRODUCTS/SERVICES, AND NO OTHER CLAIMS OR DEMANDS WHATSOEVER SHALL BE IMPOSED ON SELLER, IRRESPECTIVE OF FAULT. ALL CLAIMS FOR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, AND SPECIAL DAMAGES, AS WELL AS BUSINESS INTERRUPTION AND COVER COSTS, ARE EXPRESSLY WAIVED BY BUYER. SELLER SHALL NOT BE LIABLE FOR ANY LOSSES CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN THE DELIVERY OF PRODUCTS OR PERFORMANCE OF SERVICES, EVEN IF CAUSED BY SELLER'S NEGLIGENCE.

13. Indemnification. To the maximum extent allowed by law, Buyer must defend and indemnify Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including attorneys' fees) that Seller may incur or be obligated to pay as a result of (A) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (B) any infringement or alleged

infringement of the industrial and intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the Products ordered by Buyer; (C) Buyer's violation or alleged violation of any federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing safety, labeling, packaging and labor practices; (D) Buyer's breach of the Agreement, and (E) Buyer's breach of any of the terms, conditions and requirements of the manufacturer of any components, controls, parts, products or materials.

14. Intellectual Property. All creations of Seller related to its work and services which are or may become legally protectable or recognized as forms of intellectual property rights, including all works, whether registerable or not, in which copyright, design right, or any form of intellectual property rights may exist, including, but not limited to all artistic expressions, innovations, inventions, improvements, literary works, marks, grants, designs, processes, methods, formulas, techniques, videotapes, audiotapes, and computer programs, (all collectively referred to as "Intellectual Property"), which Seller either solely or jointly with Buyer conceives, makes or reduces to practice, are the absolute and sole property of Seller. No right, title or interest in such Intellectual Property is conveyed to Buyer unless agreed to in a separate, issue-specific, written agreement signed by a corporate officer of Seller.

15. Disputes. This Agreement shall be governed by New York law, and each provision herein must be interpreted in a manner that is valid thereunder. Unless Seller elects arbitration below, the Madison County District Court shall be the court of exclusive jurisdiction and venue over any disputes arising out of this Agreement, any such disputes must be commenced and maintained in the said District Court, and Buyer expressly waives any right of removal to federal court pursuant to 28 U.S.C. §1441. Buyer further waives and agrees not to assert as a defense in any action, suit, or proceeding relating to this Agreement any claim that (A) Buyer is not personally subject to the jurisdiction of the state and federal courts of New York, (B) the venue of the action, suit or proceeding is improper, (C) the action, suit or proceeding is brought in an inconvenient forum, or (D) that the subject matter of this Agreement may not be enforced in or by the state or federal courts of the state of New York. Seller may, at its sole discretion, elect to submit all disputes related to this Agreement to binding arbitration, administered by the American Arbitration Association under its Construction Industry Arbitration Rules and heard by a single arbitrator. An award rendered by such arbitrator shall be binding upon the parties, and judgment on such award may be entered by any court of competent jurisdiction in the State of New York as the exclusive courts of competent jurisdiction. This section shall not prohibit either party from seeking appropriate injunctive relief in the Madison County District Court.

16. Photographs. Seller may photograph areas where its work is being performed and use same for advertising or promotional purposes.

17. Non-Solicitation. Buyer shall not recruit, hire, employ, contract, or deal directly with any of Seller's employees, subcontractors, or suppliers while Seller is performing its work or for a period of 12 months after the termination of the Agreement or conclusion of Seller's work without the prior written approval of Seller.

18. Taxes. All applicable federal, state, or local sales, use, or excise taxes, and any tariffs, duties, or surcharges that may be assessed are the sole responsibility of the Buyer and shall be in addition to the price or prices stated on the Quote and/or invoice unless otherwise stated. Seller shall have the right to add to the price of the Products invoice separately any such tax, tariff, duty, or surcharge as may be imposed.

19. Force Majeure; Change of Law or Regulations. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached Seller's agreement with Buyer, for any failure or delay in fulfilling or performing any term of such agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, including but not limited to acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, hostilities (whether or not war is declared), terrorist threats or acts, riot,

other civil unrest, national emergency, revolution, insurrection, pandemic, epidemic, lockouts, strikes or other labor disputes, shortages or difficulties (whether or not relating to Seller's or its supplier's or sub-contractor's workforce), or restraints or delays affecting manufacturing or material sourcing, carriers, vehicles, or other inability or delay in obtaining or transporting supplies of adequate or suitable materials, telecommunication breakdown, power outage, or fuel or energy shortage (any of the foregoing, a "Force Majeure Event"). Seller shall notify Buyer of any Force Majeure Event and make commercially reasonable efforts to mitigate the same to the extent reasonably practicable, and the date of delivery or time for completion of performance, as the case may be, will be extended by a period of time reasonably necessary under the circumstances to overcome the effect of such Force Majeure Event.

The parties acknowledge and agree that any changes of laws, regulations, or other governmental rules, procedures, processes or requirements that cause an increase in the cost of producing or delivering any products or services under or in connection with the Agreement or which occur after Seller accepts an order ("Governmental Changes") have not been reflected in the quoted or agreed prices. Seller reserves the right to require that the Buyer pay for any new, increased or additional tariffs, duties, levies, surcharges, or like items (however denominated or designated) ("New Governmental Charges") prior to the delivery of any such products or services. Buyer, not Seller, assumes the risk of Governmental Changes and New Governmental Charges.

20. Successors and Assigns. This Agreement binds and inures to the benefit of Buyer and Seller and their respective successors and permitted assigns. Buyer may not assign any interest in, nor delegate any obligations or rights under this Agreement, without Seller's prior written consent.

21. Notices. Any notice or other communication regarding this Agreement must be in writing and delivered both by email and in one of the following manners: (A) personally delivered, (B) transmitted by facsimile (with a receipt acknowledgment), (C) transmitted by a recognized national courier service, or (D) mailed in registered or certified form, to the last known business address of the party to which notice or communication is being given.

22. No Waiver. The waiver by Seller of any breach by Buyer of any provision of this Agreement may not be construed to be either a waiver of the provision itself or to the subsequent application or any other provision of this Agreement.

23. Severability. If any provision of this Agreement is held by a court to be invalid, the remaining provisions shall continue in full force and effect without being invalidated. If any provision is modified by a court, it shall be modified so as to carry out the intent of this Agreement, and any provisions so modified shall be fully enforced as modified.

24. Survival. The provisions of this Agreement, which by their nature survive the termination of this Agreement or final completion thereof, including, without limitation, all warranty, indemnification, and payment obligations, shall remain in full force and effect after final completion, cancellation, or termination of this Agreement.

25. Headings. The headings used herein are for convenience of reference only and in no way define, limit, or describe any provision of this Agreement.

26. Entire Agreement. Buyer has not signed this Agreement in reliance upon any promise, condition, or representation not contained within this Agreement. This Agreement supersedes all prior and contemporaneous agreements, understandings, and negotiations. No waivers, modifications, amendments, or changes to this Agreement, including changes to the scope of work, parts, products, specifications, pricing, or schedules outlined in the Quote, shall be deemed effective unless in writing and signed by Buyer and a corporate officer of Seller.