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SIMMONS KNIFE & SAW TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS: As used throughout these Terms and Conditions of Purchase (hereinafter “Terms and Conditions”) and any other contract, purchase agreement or purchase order referencing these Terms and Conditions, the following definitions apply unless the context requires otherwise.

(a) “Buyer” means Simmons Knife & Saw, LLC (“Simmons”) or the Simmons affiliate, subsidiary, successor or assign that issues a Purchase Order referencing these Terms and Conditions.

(b) “Supplier” means the person, firm or company to whom this Purchase Order is addressed on the face sheets of this Purchase Order.

(c) “Products” means all goods and services or any parts thereof to be supplied under this Purchase Order. As used herein, the definition of Products shall include services, as the context requires.

(d) “Purchase Order” means the contract arising between Buyer and Supplier for the supply of Products. Where the context permits, the term Purchase Order shall include the applicable purchase agreement or other agreement that may reference these Terms and Conditions.

2. ENTIRE AGREEMENT: The Purchase Order and these Terms and Conditions, when accepted by Supplier’s written acknowledgment or commencement of performance or indication thereof, represent the complete and exclusive agreement between Buyer and Supplier for the Products, superseding all oral or written prior agreements and all other communications between Buyer and Supplier relating to the subject matter of this Purchase Order. No change in, modification of, or revision to this Purchase Order or these Terms and Conditions shall be valid unless in writing and signed by an authorized representative of Buyer’s Purchasing Department. In the event of any conflict between these Terms and Conditions and any term or condition on the face sheets of this Purchase Order, the Terms and Conditions on the face sheets of this Purchase Order shall control.

3. ACCEPTANCE: The Purchase Order and these Terms and Conditions are Buyer’s offer to Supplier. Any acceptance of this Purchase Order is expressly limited to acceptance of the terms of the Purchase Order and these Terms and Conditions. Any additional or different terms, which may be contained in any documents furnished by Supplier, including those in any acknowledgment or invoice, are deemed material and Buyer hereby objects to and rejects them as items supplied by Supplier are not part of the Terms and Conditions. Any of the following Supplier acts shall constitute acceptance (i) acknowledgment of this Purchase Order and Terms and Conditions; (ii) commencement of performance; (iii) informing Buyer of commencement under the Purchase Order; or (iv) shipping of any Products in performance of this Purchase Order. By accepting this order, supplier agrees to ensure their employees are aware of (a) their contribution to product or service conformity (b) their contribution to product safety, and (c) their importance of ethical behavior.

4. DELIVERY AND DELAYS: Time is of the essence in Supplier’s performance of a Purchase Order. Supplier shall deliver in accordance with the lead time set forth in the Purchase Order. Delivery terms shall be as provided on the face sheets. Title and risk of loss shall pass to Buyer upon receipt of the Products to Buyer’s facility address identified on the face sheet of this Purchase Order. If delivery terms are not provided on the face sheets of this Purchase Order, delivery shall be Delivered Duty Paid (DDP Incoterms (2010)) destination to Buyer’s facility address identified on the face sheets of this Purchase Order. Buyer bases its schedules upon Supplier’s representation that Supplier will deliver the Products to Buyer by the dates specified on the face



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sheets of this Purchase Order. Buyer may delay delivery of firm Purchase Order without cost provided that Buyer provides Supplier with written notice at least ten (10) days prior to the scheduled delivery date. Buyer's acceptance of delinquent deliveries shall not be deemed a waiver by Buyer of its right to cancel this Purchase Order, or to refuse to accept further deliveries.

As soon as Supplier determines that a delivery date cannot be met, Supplier shall immediately inform Buyer in writing of the cause for such delay and Supplier's earliest possible delivery date so that Buyer can determine whether to accept Supplier's proposed new schedule. Supplier agrees that in the event Products are delinquent to Buyer's acknowledged Purchase Order, Supplier will grant Buyer first priority for completed Products allocation and shipment from Supplier's products. The above remedies afforded to Buyer shall not be exclusive and Supplier shall indemnify and hold Buyer harmless from and against any and all damages, losses, demands, costs and expenses arising from claims of third parties due to any breach or default set forth above. Supplier shall comply with any specific shipping instructions issued by Buyer, including assisting Buyer with import documentation and complying with Buyer's routing guidelines.

5. **ADVANCE MANUFACTURING, PROCUREMENT OR DELIVERY:** Supplier shall not, without Buyer's express prior written consent, manufacture or procure materials in advance of Supplier's normal lead-time or deliver substantially in advance of schedule. In the event of termination or change by Buyer, Supplier shall have no claim for any such manufacture or procurement in advance of such normal lead-time unless there has been such prior written consent of Buyer. Products delivered to Buyer substantially in advance of the scheduled delivery date may be returned, at Buyer's option, to Supplier at Supplier's expense subject to re-shipment to Buyer at Supplier's expense in accordance with the schedule hereon prescribed on the Purchase Order.

6. **PRICE:** This Purchase Order shall be limited to those prices specified on the face sheets of this Purchase Order, which are not subject to increase unless specifically authorized by a written amendment to this Purchase Order. If this Purchase Order omits price terms, the price of the Products shall be the price last quoted or paid, whichever is lower. Unless otherwise provided in this Purchase Order, prices specified on the face sheets of this Purchase Order shall include all applicable federal, state, local and value added taxes at the prevailing rate, imposts, duties or other governmental charges imposed upon the manufacture, sale or transportation of the Products specified herein. Buyer shall receive the benefit of any general reduction in Supplier's prices implemented prior to delivery. In no event shall Buyer be charged a price higher than charged to Supplier's other customers for Products of like grade and quality and in substantially the same quantities.

7. **PAYMENT:** Payment terms shall be as provided on the face sheets of this Purchase Order. If payment terms are not provided on the face sheets of this Purchase Order, all invoices will be paid by Buyer within sixty (60) days of the later of (i) Buyer's receipt of Supplier's correct invoice, which includes among other things, Buyer's Purchase Order number or (ii) the date of receipt, inspection and written acceptance of the Products so ordered.

8. **QUALITY ASSURANCE AND INSPECTION:**

(a) Supplier shall provide and maintain a quality control system acceptable to Buyer and in compliance with those quality control standards (if any) specified on the face sheets of this Purchase Order. Supplier's quality control system shall be subject to confirmation and acceptance by Buyer.

(b) Buyer maintains the right of access by their organization, their customer, and regulatory authorities to all Supplier's facilities involved in the Purchase Order and to audit all applicable records and may require



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Supplier to flow down to its sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.

9. **REJECTION OF NONCONFORMING PRODUCTS:** In the regular course of its business, Buyer may reject, refuse acceptance, or revoke acceptance of any or all of the Products which are not strictly in conformance with all of the requirements of this Purchase Order and related and applicable drawings, designs, and specifications, and will notify Supplier of such rejection. At Supplier's risk and expense and at Buyer's option, all such Products will be returned to Supplier for immediate (i) repair, replacement, and other correction and redelivery by Supplier as Buyer may direct or (ii) refund by Supplier of the price of any such Products. Notwithstanding any other provision, Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from the non-conformance including but not limited to expenses related to inspecting, unpacking, examining, re-packing and storing any Products rejected or refused in accordance with the above. Buyer may withhold, deduct and/or set off money due, or which may become due to Supplier arising out of Supplier's performance under the Purchase Order. Supplier shall not re-tender rejected supplies unless Supplier submits notification of such past rejection with the re-tender and Buyer has consented to such re-tender.

10. **WARRANTY:** In addition to all warranties prescribed by law or given by Supplier, Supplier warrants to Buyer and its customers that all Products furnished hereunder will (i) be free from defects in material and workmanship; (ii) conform to the applicable drawings, designs, samples and specifications; (iii) meet all functional performance requirements; (iv) meet all of the requirements of this Purchase Order; and (v) be free from design defects. Unless otherwise specified in the Purchase Order, the Products shall be (i) new and not used or reconditioned; (ii) merchantable and (iii) suitable for the particular purpose or use for which Buyer purchases them. Supplier shall be liable for Buyer's actual costs, expenses and damages related to or arising from the Products not conforming to warranty requirements set forth in the Purchase Order and herein. This warranty shall survive any inspection, delivery, acceptance or payment by Buyer of the Products and are in addition to all other warranties available at law or equity. In addition to any other remedies which may be available at law, Buyer, at its option, may return to Supplier any nonconforming or defective Products, or require timely correction or replacement of the Products, and Supplier shall bear full responsibility for risk of loss or damage and full transportation charges including duty and tariff charges. If Buyer does not require correction or replacement of nonconforming or defective Products, Supplier shall remit such portion of the contract price or such additional amount as is equitable under the circumstances.

11. **CHANGES:** Buyer may at any time, by written notice, make unilateral changes within the general scope of this Purchase Order in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipping or packing; (iii) place or time of inspection, acceptance or point of delivery; (iv) delivery schedule; (v) quantity of Products ordered; or (vi) order a suspension of Supplier's work. Should any such change increase or decrease the cost of, or the time required for performance of this Purchase Order, an equitable adjustment may be requested by Supplier or Buyer in the price, delivery schedule, or both. No claim by Supplier for such adjustment will be valid unless submitted to Buyer in writing within twenty (20) days from the date of such change and agreed to in writing by Buyer. If Supplier considers that the conduct, statement or direction of any of Buyer's employees constitutes a change hereunder, Supplier shall notify Buyer's authorized representative and take no action on the perceived change pending written approval of Buyer's authorized representative. Only Buyer's authorized representative has authority to approve a change. Any change made by Supplier without such written approval shall be deemed voluntary by Supplier and not compensable in the cost of or time required for performance. Nothing contained in this clause shall relieve Supplier from proceeding immediately in the performance of this Purchase Order as changed.



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12. BUYER SUPPLIED MATERIALS:

(a) Supplier shall furnish all materials, tools and equipment necessary for it to fulfill this Purchase Order (“Materials”). Supplier represents that it now has, or can readily procure without assistance from Buyer and without delay or modification of agreed upon timelines, all Materials and the facilities necessary for the performance of this Purchase Order.

(b) Any Material furnished to Supplier by or on behalf of Buyer or purchased by Buyer from Supplier (by a separate Purchase Order or as an item under this Purchase Order) for use in connection with the performance by Supplier hereunder and any improvements thereto or replacements thereof shall be held by Supplier as Buyer’s property and shall not be used by Supplier except for the sole purpose of Supplier’s performance under this Purchase Order. Supplier shall account for all Materials so furnished to Supplier and/or purchased by Buyer. Buyer does not warrant any aspect of the Materials. If requested by Buyer, Supplier shall execute a bailment agreement in a format acceptable to Buyer evidencing Buyer’s ownership of the Materials. Supplier may not deliver custody of any Materials to any person or entity other than Buyer without Buyer’s prior written permission. Buyer may enter Supplier’s premises at any reasonable time to inspect the Materials and Supplier’s records with respect thereto.

(c) All of said furnished Materials held by Supplier for use by Supplier in connection with performance under this Purchase Order shall be satisfactorily marked, segregated or otherwise clearly identified by Supplier as property of Buyer and/or others (as the circumstances may require). Supplier shall keep such Materials in good condition and repair and shall be returned by Supplier, at Buyer’s request and at Supplier’s expense, in as good as a condition as when received except for reasonable wear and tear and except to the extent that such Materials have been incorporated in Products furnished by Supplier pursuant to this Purchase Order or has been properly consumed in the normal performance of work hereunder.

(d) While in Supplier’s custody and control, all of said furnished Materials so held shall be held at Supplier’s risk and Supplier is responsible for paying all personal property taxes that accrue on Materials in Supplier’s possession. Supplier shall keep such Materials insured at not less than replacement cost thereof. All such insurance coverage shall provide that payments for loss thereof and damage thereto shall be paid to Buyer. Supplier shall furnish such evidence of insurance as Buyer may require, which shall include but not be limited to naming the Buyer as an additional insured. Supplier shall make no charge for storage, maintenance or retention of Materials.

13. INDEMNIFICATION AND INSURANCE: Supplier shall indemnify, defend, and hold harmless Buyer and its affiliates, shareholders, officers and employees from and against any and all claims, demands, actions, losses, damages, liabilities, costs, and expenses, including but not limited to attorneys’ fees, relating to, arising out of or in connection with (i) Supplier, its employees, agents, subcontractors, and/or lower tier subcontractors performance hereunder, (ii) any act or omission of Supplier, its employees, agents, subcontractors, and/or lower tier subcontractors in the performance hereunder or (iii) any Products supplied by Supplier under this Purchase Order. In the event Supplier, its employees, agents, subcontractors, and/or lower tier subcontractors enter premises occupied by or under the control of Buyer or third parties in the performance of this Purchase Order, Supplier shall indemnify, hold harmless and defend Buyer and its affiliates, shareholders, officers and employees from any loss, cost, damage, expense or liability by reason of property damage or personal injury, including Supplier’s employees, of any nature or kind whatsoever arising out of, as a result of, or in connection with such performance occasioned in whole or in part by the actions or omissions of Supplier, its employees, agents, subcontractors, and/or lower tier subcontractors. Without in any way limiting the foregoing undertakings, Supplier and its subcontractors and/or lower tier subcontractors shall maintain insurance, naming Buyer as an additional insured, adequate to cover any products liability, public



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liability, property damage and automobile liability or any damage incurred in connection with Supplier's performance of any work on or about Buyer's premises and shall maintain proper Worker's Compensation insurance covering all employees performing this Purchase Order. If requested by Buyer, Supplier will furnish certificates of insurance from its insurance carriers evidencing compliance with the foregoing obligation.

14. **DUPLICATION AND USE OF BUYER'S DATA:** For this section "Buyer's Data" means all technical data (including, without limitation, manufacturing, process, know-how, designs, and data describing physical, functional, or performance characteristics), computer software, and all other information and data that (i) has been supplied to Supplier (or any other person) by or on behalf of Buyer, whether transmitted in writing, orally, or otherwise; (ii) Supplier has designed, developed, or created at Buyer's expense; and (iii) all derivatives of (i) and (ii) that Supplier has designed, developed, or created. Supplier may use Buyer's Data only in the performance of work for Buyer. Except for articles or designs incorporated in the Products delivered hereunder which originated with Supplier and which may be completely severed from such Products, Supplier shall not, either during the performance of this Purchase Order or thereafter (i) reproduce or manufacture any Products called for hereunder or any part thereof for any third parties utilizing Buyer's Data except in the performance of Purchase Orders for Buyer or (ii) disclose any Buyer's Data without first obtaining Buyer's written consent. Upon Buyer's request, Supplier shall return all Buyer's Data and any copies thereof to Buyer and to any third party for whom Supplier transmitted data. If with Buyer's written consent, Buyer's Data is furnished to Supplier's suppliers or subcontractors for use in the performance of this Purchase Order, Supplier shall (i) insert the substance of this provision in its orders with its suppliers and subcontractors and (ii) remain responsible hereunder for any breach by such supplier or subcontractor.

15. **SUPPLIER'S DISCLOSURES.** All unpatented ideas, information, design devices, prints, drawings, and technical information concerning Supplier's products, methods or manufacturing processes which Supplier discloses or furnishes to Buyer in connection with this Purchase Order shall be, except only to the extent as may be otherwise specifically agreed to in a written nondisclosure agreement signed by the authorized representatives of Buyer and Supplier, deemed to have been disclosed or furnished as part of the consideration for this Purchase Order and Supplier agrees not to assert any claims by reason of the use, duplication or disclosure thereof by Buyer and or its successors, assigns or customers. Buyer and its successors and assigns may subject all Products ordered herein to further manufacture, combine them with other articles, sell or put them to any use whatsoever, and Supplier may make no claim for royalties or additional compensation due to such manufacture, combination, sale or use.

16. **ASSIGNMENT:** No assignment of this Purchase Order, or any duty or right under it, shall be binding upon Buyer unless Supplier first obtains Buyer's written consent to such assignment. Any attempt to assign or delegate in violation of this section shall be void.

17. **TERMINATION:**

(a) **Termination for Convenience.** Buyer may terminate, for its convenience, this Purchase Order, in whole or in part, by providing written notice to Supplier. Upon receipt of such notice, Supplier shall (i) immediately discontinue all work with respect to that portion of this Purchase Order terminated by Buyer; (ii) place no additional orders or subcontracts for materials or services as to that part of the work terminated; and (iii) take such other reasonable action as may reduce any termination costs due Supplier. In the event Buyer terminates for convenience any Purchase Order, in whole or in part, Supplier may submit a written claim which shall be limited to (i) an amount equal to or less than the aggregate purchase price of all Products completed prior to the termination within the established lead-times set by Buyer's delivery schedule, and (ii) Supplier's raw materials, work in process, supplies and other material costs (excluding overhead and profit) incurred in the production of any uncompleted Products scheduled for delivery within the established lead-times; provided



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that such costs under (i) and (ii) cannot be allocated by Supplier to other work. In no event shall termination costs exceed the total purchase price of the Products terminated by Buyer.

(b) Termination for Default. Buyer, by written notice, may terminate this Purchase Order for default if Supplier fails to (i) comply with any of the terms of this Purchase Order or these Terms and Conditions; or (ii) provide Buyer, upon request, with adequate assurance of future performance within the time period requested by Buyer.

(c) Termination for Insolvency. Buyer may terminate this Purchase Order immediately upon written notice to Supplier if Supplier (i) becomes insolvent; (ii) files a voluntary petition in bankruptcy; (iii) executes an assignment for the benefit of creditors; (iv) is adjudicated as bankrupt or insolvent or a receiver or trustee is appointed for Supplier; or (v) Supplier terminates its existence or ceases to do business.

(d) Remedies Upon Termination for Default or Insolvency. Any termination for default or insolvency shall be without liability to Buyer except for completed Products delivered and accepted by Buyer prior to such termination. Unless otherwise agreed to in writing by Buyer, any termination of this Purchase Order for Default or Insolvency shall operate as a cancellation of the entire undelivered portions of this Purchase Order, and Buyer shall retain all remedies at law or in equity arising out of the cancellation. Supplier will be liable for all Buyer's actual costs, expenses and damages caused by or resulting from Supplier's default including but not limited to excess costs associated with the re-procurement of the Products.

18. STATUS AS INDEPENDENT CONTRACTOR: Supplier is an independent contractor and while performing work on or off Buyer's premises, neither it nor any of its agents or employees shall be considered agents or employees of Buyer.

19. GOVERNING LAW: This Purchase Order and the contract between the parties evidenced hereby shall be deemed made in the State of Illinois and any action arising out of or related thereto, including tort claims, shall be construed and interpreted solely in accordance with the laws of Illinois disregarding any conflict of law provisions that may require the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto, shall not apply. Venue and jurisdiction for all legal proceedings of any kind or nature brought to enforce any provisions of these Terms and Conditions or the Purchase Order shall also lie within the state and County from which Buyer issued the Purchase Order. Pending any prosecution, appeal, or final decision of any dispute, or the settlement of any dispute arising under the Purchase Order or these Terms and Conditions, Supplier shall proceed diligently, as directed by Buyer, with performance of the Purchase Order. In no event shall Supplier commence any action arising out of the Purchase Order or the contract between the parties later than one year after the cause of action has accrued.

20. PUBLICITY: Supplier shall not use the name of Buyer in any advertising or publicity, nor make any news release, public announcement, denial, or confirmation of this Purchase Order or any part or any phase thereof, without the prior written approval of Buyer.

21. DATA PROTECTION: With regard to the processing of Personal Data by Supplier, its employees, agents, subcontractors, and/or lower tier subcontractors in connection with the Contract, the Supplier shall only Process the Personal Data to the extent required to provide the Services in accordance with the terms of the Contract or otherwise in accordance with documented instructions from the Buyer. The Supplier will not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorized to do so in writing by Buyer. Finally, the



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Supplier will implement appropriate technical and organizational measures to protect Personal Data against unauthorized or unlawful Processing and against accidental or unlawful loss, destruction, damage, alteration or disclosure.

22. SEVERABILITY: If any of the Terms and Conditions of purchase herein or this Purchase Order are at any time held to be invalid or unenforceable, such term or condition shall be construed as severable and shall not in any way render invalid or unenforceable the remainder of the Terms and Conditions which shall remain in full force and effect and, in lieu of the invalid or unenforceable provision, there will be added as part of these Terms and Conditions of purchase or this Purchase Order one or more provisions as similar in terms as may be valid and enforceable under applicable law.

23. Dispute: In the event either party to this Purchase Order and/or Terms and Conditions files a lawsuit against the other party, to secure performance of any of the obligations herein provided for, or to establish damages for the breach thereof, or to obtain any other appropriate relief, whether by way of prosecution or defense, the prevailing party shall be entitled to recover all costs of suit, including reasonable attorneys' fees and costs incurred therein.