

TUNGCO, INC.

SALES ORDER TERMS AND CONDITIONS

1. **Applicability.**

(a) These terms and conditions of sale (these “**Terms**”) are the only terms that govern the sale of the goods (“**Goods**”) by Tungco, Inc. or one of its affiliates (“**Seller**”) to the buyer named on the Order Confirmation (as defined below) (“**Buyer**”). Collectively, Buyer and Seller are referred to as the “**Parties**” and individually as “**Party**.”

(b) The accompanying order confirmation (the “**Order Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement supersedes any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller expressly rejects Buyer’s general terms and conditions of purchase, and fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions or serve to modify or amend these Terms. Acceptance of the Order Confirmation by Buyer is a prerequisite to the purchase of the Goods and shall operate as an acceptance of these Terms which are expressly incorporated into the Order Confirmation. Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the Goods (“**Master Agreement**”), then the Master Agreement shall prevail to the extent of any inconsistency with these Terms.

2. **Delivery.**

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of the Goods. Delivery dates given by Seller are estimates only and are subject to shipping variations and requirements. Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods to the address specified in the Order Confirmation (the “**Delivery Point**”) using Seller’s standard methods for packaging. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. Buyer is responsible for fees associated with not taking timely delivery of the Goods, such as storage fees.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

3. **Quantity.** If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Order Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods at the price set forth in the Order Confirmation adjusted on a pro rata basis.

4. **Title and Risk of Loss.** Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Kentucky Uniform Commercial Code.

5. **Amendment and Modification.** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party.

6. **Inspection.**

(a) Buyer shall inspect the Goods upon receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in the Order Confirmation; or (ii) product’s label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable third-party shipping and handling expenses actually incurred and paid by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at the Delivery Point. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 6(b) are Buyer's exclusive remedies for Nonconforming Goods. Except as provided under Section 6(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

7. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in the Order Confirmation.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets. The Prices include standard packaging. The Prices exclude transportation and insurance costs which are the responsibility of the Buyer.

8. Payment Terms.

(a) Unless otherwise agreed in writing by the Parties, Buyer shall pay Seller all invoiced amounts due within [30] days after the date of Seller's invoice. All payments hereunder shall be in US dollars and made in accordance with the payment instructions set forth in the Payment Instructions Letter as provided by Seller to Buyer from time to time (the "**Payment Instructions**"). Seller shall have no liability with respect to Losses arising out of or occurring in connection with the Buyer's failure to: (i) strictly adhere to the Payment Instructions, or (ii) otherwise comply with the payment security provisions set forth in Section 9. Seller reserves the right to require pre-payment in its sole discretion.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of [2]% per month or the highest rate permissible under applicable law. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for [10] days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

9. Payment Security.

(a) Buyer acknowledges and agrees that it is solely responsible for ensuring the accuracy and security of any payments made to Seller hereunder. Buyer agrees to comply with all of Seller's payment security procedures.

(b) Buyer shall be liable for any Losses arising out of or occurring in connection with any fraudulent inducement activities (including, but not limited to, business email compromise incidents, phishing attacks, social engineering scams, and other forms of email fraud) that originate from Buyer's email systems, computer networks, or its personnel.

(c) Buyer shall employ industry-standard email security measures to protect against phishing, spoofing, and other forms of email-based attacks.

10. Limited Warranty.

(a) Seller warrants to Buyer that at the time of delivery to the Delivery Point the Goods, the Goods will materially conform to Seller's specifications.

(b) The warranties under this section do not apply where the Goods have been: (i) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by

Seller, or improper testing, storage, handling, repair, or maintenance; (ii) reconstructed, repaired, or altered by anyone other than Seller or its authorized representative; or (iii) used with any third-party product or product that has not been previously approved in writing by Seller.

(c) **WARRANTIES DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER INDIVIDUAL OR ENTITY ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION.

11. **LIMITATION OF LIABILITY.**

(a) IN NO EVENT SHALL SELLER OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR SUCH ORDER.

12. **Compliance with Law.** Buyer shall at all times comply with all laws applicable to the operation of its business, this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods, and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any law.

13. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Buyer will be entitled to receive the Goods for which it has paid. Seller may avail itself of any and all remedies available to it for an event of default, including but not limited to: (i) reselling the Goods in which Buyer shall pay the difference between the extended Price and the resale price; (ii) cancelling this Agreement in which case Buyer shall be liable for the extended Price and any of Seller's costs or expenses arising out of any liabilities caused by such cancellation; and (iii) extending the anticipated delivery date or suspending delivery.

14. **Indemnification.** Buyer shall defend, indemnify, and hold harmless Seller, and its subsidiaries, affiliates, successors or assigns, and their respective directors, officers, shareholders, managers, members, advisors, employees against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including, but not limited to, attorney and professional fees and costs and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses"), arising out of or occurring in connection with: (a) this Agreement; (b) the Goods (other than with respect to non-conformity to the warranty provided in these Terms), including Buyer's handling, use, or resale of the Goods, or any product claims or labeling used related to the Goods; (c) transport of the Goods; (d) Buyer's negligence or willful misconduct; (e) Buyer's failure to strictly adhere to the Payment Instructions, or (f) the payment security provisions set forth in Section 9. Buyer's obligation to defend, indemnify, and hold harmless extends to and includes claims of Seller's sole negligence.

15. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Seller operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Seller precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Seller.

16. Confidential Information. All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section.

17. Force Majeure. Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party’s (“**Impacted Party**”) reasonable control, including, the following force majeure events (“**Force Majeure Events**”): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) order or action by any governmental authority or requirements of law; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other events beyond the reasonable control of the Impacted Party.

18. Assignment. Buyer’s rights, interests, or obligations hereunder may not be assigned, transferred, or delegated by Buyer without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. Seller may at any time assign, transfer, delegate, or subcontract any or all of its rights or obligations under this Agreement without Buyer’s prior written consent.

19. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement. Nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21. Governing Law; Jurisdiction. All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Kentucky or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Kentucky. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Kentucky, in each case located in the City of Madisonville and County of Hopkins, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

22. Notices. All notices shall be in writing and addressed to the Parties at the addresses set forth on the face of the Order Confirmation or to such other address for either Party as that party may designate by written notice. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of receipt), or certified or registered mail (return receipt requested, postage prepaid). Except as otherwise provided in the Order Confirmation, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

23. Severability. If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
