

# EAGLEPICHER<sup>+</sup>

## TECHNOLOGIES

EAGLEPICHER TECHNOLOGIES, LLC  
("SELLER")  
COMMERCIAL TERMS AND CONDITIONS OF SALE

### GENERAL

The goods and services covered by this quotation shall be furnished subject to the terms and conditions as set forth herein. Upon acceptance of this quotation, Buyer agrees to incorporate these terms and conditions of sale into Buyer's purchase order/contract without alteration. Any terms and conditions of the Buyer's purchase order/contract which are inconsistent with these terms and conditions shall be considered a counteroffer and shall not be binding on the Seller unless accepted by Seller in writing, or unless Buyer and Seller subsequently agree in writing to specific terms and conditions which are different from these provisions.

### LICENSES AND PERMITS

Buyer is responsible for obtaining appropriate permits/licenses. At its discretion, Seller may require proof that Buyer possesses permits/licenses necessary. Buyer agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any product acquired from under this quotation. Buyer agrees that it is Buyer's responsibility to comply with the Export Administration Regulations of the U.S. Department of Commerce ("EAR").

### DELIVERY

Unless otherwise stated in this quotation, all goods are sold F.O.B. shipping point. Seller shall under no circumstances be responsible for failure to deliver or delay in delivery under any purchase order/contract when such failure or delay is due to any cause beyond Seller's reasonable control, either directly or indirectly. Including but not limited to: fire, war, riot, civic disorder, national emergency, revolution, insurrection, epidemic, pandemic, transportation delay or strike, inability to obtain supplies, labor shortage, work strike, act of God or of the public enemy, or any future law, regulation, or act of the federal or of any state or local government affecting the conduct of Seller's business with which Seller in its sole judgment and discretion deems it advisable to comply as a legal or patriotic duty. In the event of any such delay caused by any of the aforesaid circumstances, Seller shall have such additional time within which to perform as may be reasonably necessary under the circumstances. Seller may deliver products in installments. Delivery dates are estimates. Seller shall not be liable for any damage, losses or expenses incurred by Buyer if Seller fails to meet the estimated delivery dates.

### INSPECTION/ACCEPTANCE OF GOODS AND SERVICES

Buyer's inspection and acceptance of good or services covered by this quotation shall be made at the Buyer's plant unless otherwise agreed in writing by Buyer and Seller. All goods or services shall be subject to inspection and acceptance by Buyer within fifteen (15) days after delivery of goods or services. Goods or services shall be deemed accepted by any of the following actions of the Buyer: (i) the absence of a particularized rejection of the goods or services after the reasonable opportunity to inspect the goods or services; (ii) where Buyer has expressly accepted or paid for the goods or services; or (iii) where Buyer has accepted part of the goods or services, the acceptance is an acceptance of all the goods and services. In the absence of the foregoing, goods or services shall be deemed accepted by Buyer fifteen (15) days following delivery of the goods or services to Buyer. Title and risk of loss shall pass at the F.O.B. point, Buyer shall be responsible for the insurance and protection of goods while in transit, or while awaiting delivery if Buyer requests Seller to hold or store the goods pending delivery.

### PAYMENT

Payment terms are net thirty (30) days after date of Seller's invoice. A sales/use tax will be assessed on all material purchased. If your purchase is exempt from sales tax (i.e. purchased for resale, government, etc.) please provide EaglePicher Technologies with an exemption certificate indicating the nature of the exemption and the applicable jurisdiction.

### QUANTITY

Seller's weight and quantity counts taken at the shipping point shall govern claims for weight or quantity shortages are waived by Buyer unless such claims are received by Seller in writing within fifteen (15) days after arrival of the goods at destination.

### WARRANTY

Seller warrants that the goods delivered hereunder will meet Seller's standard specifications for such goods or such other specifications as Buyer and Seller may have expressly agreed to in writing for a period of one year or for as long as otherwise specified in the governing proposal or contract. SELLER MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND SPECIFICALLY EXCLUDES THE WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

Any complaints of breach of warranty must be received in writing by the Seller within fifteen (15) days after arrival of the goods at destination.

### **RETURN OF PRODUCT**

No return shipment of product will be accepted by Seller unless Seller's prior consent and a return authorization number have been obtained.

### **INDEMNIFICATION/LIMITATION OF LIABILITY**

Seller's liability for damages whether based on Seller's negligence, breach of contract, warranty or otherwise, shall not exceed the purchase price of the goods or services offered for sale hereunder, Seller shall not indemnify Buyer or otherwise be liable in contract or in tort for special, indirect, incidental, or consequential damages such as, but not limited to, loss of profits or revenue. Buyer assumes all risk and liability resulting from use of the goods delivered hereunder whether used alone or in combination with other products of Seller or third parties.

### **USE OF PRODUCTS**

The goods sold hereunder were not designed or tested for safe introduction into the human body. Buyer hereby warrants that the goods purchased hereunder will not be used in an application that involves introduction of the goods into a human body.

### **INTELLECTUAL PROPERTY RIGHTS**

Seller shall retain sole and exclusive ownership of all intellectual property rights in all trade secrets, patents, proprietary information, and other knowledge or information it has created or acquired from third parties and has used in this quotation. Seller shall also retain sole and exclusive ownership of all intellectual property in all trade secrets, patents, proprietary information, and other knowledge or information that Seller generates in the performance of this quotation or resulting purchase order or contract. Seller will defend Buyer from and against any claim that goods or services infringe or misappropriate a third party's United States intellectual property rights, including but not limited to, patents, copyrights, and trademarks. Seller's obligation to defend is subject to Buyer's: (1) giving Seller prompt written notice of any such claim, demand, or action within fifteen (15) days after Buyer becomes aware of the same; (2) allowing Seller to conduct the defense of the claim, including negotiations for settlement or compromise, provided that Buyer may (but will not be required to do so) participate in such defense through separate counsel selected by Buyer at its sole expense; and (3) providing Seller with full information and reasonable assistance in conducting the defense of the claim at Seller's expense. Seller will not defend Buyer to the extent such infringement arises as a result of: (a) the modification or alteration of the goods or services by anyone other than Seller or a person or entity working on Seller's behalf; (b) use of the goods or services in connection or in combination with equipment, devices, or software not supplied, approved, or recommended by Seller; or (c) use of the goods and services in a manner not in accordance with this quotation or resulting purchase order or contract. Seller will not be responsible for any settlement reached by Buyer without Seller's prior written consent. The foregoing provision states Seller's entire liability and Buyer's exclusive remedy with respect to any action based on Seller's alleged infringement or misappropriation of the intellectual property rights of a third party.

### **CANCELLATION**

Any order or contract resulting from this quotation may be cancelled only upon Seller's acceptance of Buyer's written cancellation notice delivered to Seller. The effective date of such cancellation shall be the date Seller's acceptance of it. Upon receipt and acceptance of Buyer's cancellation notice, Seller shall advise Buyer of any cancellation charges which will apply including, but not limited to, restocking charges and additional processing charges. Notwithstanding acceptance of Buyer's cancellation notice, Seller shall have the right to continue processing the goods affected by such order to the point at which processing can be halted most logically and economically under the circumstances. Buyer shall pay cancellation charges upon receipt of Seller's statement for such charges.

### **FORCE MAJEURE**

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this quotation or any resulting purchase order or contract, for any failure or delay in fulfilling or performing any term of this quotation when such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, pandemic, epidemic, labor shortage, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), factory shutdowns, restraints or delays or shortages affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials or inability to obtain sufficient quantity of fuel, power labor, manufacturing facilities of materials or other supplies from the usual sources or telecommunication breakdown or power outage.

### **APPLICABLE LAW / REGULATIONS**

The parties represent, warrant and certify each shall comply with all applicable international, federal, state, and local laws, decrees, rules, regulations, public policies, governmental orders, and/or ordinances, including the European Agreement Concerning the International Carriage of Dangerous Goods, the Export Administration Regulations ("EAR"), the International Traffic in Arms Regulations ("ITAR"), and/or the sanctions of the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC"), or any other applicable Trade Control Laws, including recordkeeping requirements, of the country in which the goods are manufactured, received, located, transshipped, and/or imported. The parties further represent and warrant each is familiar with and

understands the requirements of all anti-bribery laws, including the U.S. Foreign Corrupt Practices Act of 1977 (“FCPA”), the U.K. Bribery Act and all rules and regulations under such laws, including recordkeeping requirements, that may apply to this quotation or a party’s actions in connection with or under this quotation or resulting purchase order or contract (“Anti-Bribery Laws”) and will neither undertake, nor cause, nor permit to be undertaken, any activity or omission which would have the effect of causing the other to be in violation of any Anti-Bribery Laws. This quotation and any purchase order or contract resulting therefrom shall be subject to the provisions of the uniform commercial code as enacted by the State of Missouri. The terms and conditions of this quotation and any resulting purchase order or contract shall be construed, interpreted, and enforced in accordance with the applicable statutes and implementing court decisions, without regard to choice of law rules, of the State of Missouri.

#### **DISPUTE RESOLUTION**

Any and all disputes, controversies or claims arising under or relating to this quotation or any resulting purchase order or breach, termination, or invalidation under this quotation shall upon written notice, be referred to the respective representatives for each party. The parties, through their representatives and/or senior management shall confer in good faith to attempt to resolve the matter. If the parties are unable to resolve the matter within a reasonable amount of time, either party may refer the matter to administered mediation. If the parties are unable to fully resolve the dispute or claim through mediation, then either party may file a lawsuit in a court of competent jurisdiction, in accordance below.

#### **ATTORNEYS’ FEES**

If Buyer fails to pay any amounts due under this quotation or any purchase order or otherwise breaches this quotation and Seller has to enforce its rights hereunder, whether or not through litigation, Seller shall be entitled to be reimbursed by Buyer for all costs and expenses incurred relating to the collection or breach, including all attorneys’ fees.

#### **GOVERNING LAW, JURISDICTION, AND VENUE**

The UN Convention of Contracts for the International Sale of Goods (“CISG”) shall not govern the rights and obligations of the parties under this quotation. Rather, this quotation shall be 06-24-2021 14 interpreted, governed, construed and enforced in accordance with the laws of the State of Missouri, without regard to its conflicts of law principles. Buyer hereby consents to the exclusive jurisdiction of the State of Missouri, and all litigation matters shall be heard and determined by state courts located in Jasper County, Missouri or in federal courts located in the Western District of Missouri. Buyer waives any objection based on lack of personal jurisdiction, improper venue or forum non conveniens.