

# EAGLEPICHER<sup>+</sup>

## TECHNOLOGIES

EAGLEPICHER TECHNOLOGIES, LLC

### STANDARD TERMS AND CONDITIONS OF SALE (COMMERCIAL OR GOVERNMENT FIXED PRICE)

#### **GENERAL**

The goods and services (individually and, collectively, the “Goods”) sold by EaglePicher Technologies, LLC (“Seller”) and purchased by a buyer (“Buyer”) are covered by these terms and conditions as set forth herein (“Terms”). Buyer agrees to incorporate these Terms into a written and signed purchase order between the parties (“Order”). Any terms and conditions that may be set forth or incorporated into such Order by Buyer which are inconsistent with these Terms shall not be binding unless accepted by Seller in writing.

#### **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 AND ACCEPTANCE OF GOODS AND SERVICES**

Buyer's inspection and acceptance of goods or services covered by this quotation shall be made at the Buyer's plant or shipping destination (as applicable) unless otherwise agreed in writing by Buyer and Seller. Goods are sold and shipped F.O.B. shipping point (Incoterms 2020), and title and risk of loss shall pass at the F.O.B. shipping point. 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. 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 (at Buyer's cost) pending delivery. Further, Buyer is responsible for obtaining appropriate permits/licenses for Goods.

#### **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. Buyer is responsible for all sales and use taxes associated with the Goods, and, if Buyer believes its purchase is exempt from sales tax (i.e. purchased for resale, government, etc.) then it must provide Buyer with all applicable and necessary exemption certificate(s) 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 calendar (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 Order. Seller warrants that the Goods delivered hereunder will meet Seller's standard specifications for such goods or such other specifications as Buyer and Seller have expressly agreed to in writing for a period of one year or for as long as otherwise specified in the Order. Seller's obligations hereunder shall not apply to any Good or part thereof, which: (a) Buyer does not properly store, install, use, or maintain; (b) Buyer modifies, other than pursuant to Seller's written approval or instructions, if any, or subjects to testing not approved in writing by the Seller; (c) Buyer has subjected to any kind of misuse, detrimental exposure; (d) Buyer has used the Good in a manner that is inconsistent with or beyond its intended purpose; or (e) has been involved in an accident. Seller shall have a right to modify these warranty terms with ninety (90) days' written notice, applicable to new orders only. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, THE GOODS ARE SOLD "AS IS", SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT THIS SECTION SET FORTH SELLER'S SOLE REMEDIES AND RECOURSE FOR ALL CLAIMS, LOSSES, LIABILITIES, OBLIGATIONS, DEMANDS, SUITS, JUDGMENTS OR CAUSES OF ACTION, PENALTIES, FINES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER WHICH MAY RESULT FROM OR ARISE FROM THE GOODS. 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 GOODS**

No return shipment of Goods will be accepted by Seller unless Seller's provides prior written consent and a return authorization number has been obtained. Buyer will be responsible for any costs or fees associated with return of Goods.

## **INDEMNIFICATION/LIMITATION OF LIABILITY**

IN NO EVENT SHALL SELLER BE LIABLE UNDER THESE TERMS OR ANY ORDER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS (DIRECT OR INDIRECT), LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS BUSINESS OPPORTUNITIES, DAMAGE TO GOOD SHALL OR REPUTATION, OR LOSS OF DATA, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. SELLER'S MAXIMUM TOTAL, AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING UNDER OR RELATED TO THESE TERMS OR ANY ORDER SHALL NOT EXCEED THE AMOUNT PAID BY BUYER FOR THE MOST RECENT PURCHASE OF GOODS PROVIDED IN AN ORDER. 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 Buyer will indemnify, defend, and hold Seller and its officers, directors, employees, and agents, harmless from and against all third party claims, actions, suits, proceedings, expenses, damages, costs, and liabilities of any kind whatsoever, including, without limitation, civil penalties and/or regulatory fines, legal expenses and reasonable attorneys' fees, in each case arising out of (a) a breach by Buyer of any representation, warranty, covenant, or obligation of Buyer under this Distribution Agreement, or (b) a failure of Buyer to comply with all applicable laws and regulations..

## **USE OF PRODUCTS**

The Goods sold hereunder were not designed or tested for 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. Buyer shall pay cancellation charges upon receipt of Seller's statement for such charges.

### **FORCE MAJEURE**

Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for payment obligations) when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of the non-performing party, 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, pandemic, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage ("**Force Majeure Event**"). If a Force Majeure Event occurs that a party believes may materially delay the performance of its obligations under this Agreement, such party shall immediately notify the other party in writing and use commercially reasonable efforts to mitigate the effect of such Force Majeure Event. This Section shall not apply to either party's payment obligations under this Agreement. A party may terminate this Agreement if a Force Majeure Event prevents the other Party's performance for a period greater than fifteen (15) consecutive days.

### **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 06-24-2021 6 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 and these Terms and any Order resulting therefrom 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. Any Order 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. 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 convenien. Nothing in these Terms is intended, or should be construed, to create a partnership, agency, joint venture, or employment relationship between the parties. Neither party is authorized to make any representation, contract, or commitment on behalf of the other. Buyer may not assign any of its rights or obligations under these Terms or an Order to a third party without Seller's prior written consent. These Terms shall be binding upon and inure to the benefit of the parties and their respective successors or assigns.