

# TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (these "Terms") will apply to each purchase order or any other agreement to which these Terms are attached or incorporated by reference (with such purchase order or other agreement sometimes referred to as an "Order") and shall govern the sale of the goods ("Goods") by Huntsman Building Solutions (USA) LLC ("HBS") to the person or entity purchasing such Goods from HBS (the "Buyer"). By entering into a contract with HBS for the purchase of Goods, Buyer agrees it has read and will be bound by these Terms. These Terms will be valid without signature and can be found at [www.HuntsmanBuildingSolutions.com/en-US/sites/en\\_us/files/HBS\\_Terms\\_and\\_Conditions\\_of\\_Sale.pdf](http://www.HuntsmanBuildingSolutions.com/en-US/sites/en_us/files/HBS_Terms_and_Conditions_of_Sale.pdf) ("Website"). These Terms may hereafter be revised, from time to time, by HBS by posting revisions on the Website, and such revisions shall be binding on Buyer. Buyer is responsible for regularly reviewing the Website to obtain timely notice of such revisions and shall review the Website prior to the submission of each Order to which these Terms are incorporated to ensure Buyer's acceptance thereof.

**1. Applicability.** The Order and these Terms (collectively, this "Agreement") is the sole and exclusive agreement with respect to the matters discussed herein and the provision of Goods hereunder (except for any contemporaneous writing agreed to in writing by HBS expressly modifying the terms and conditions hereof, which is hereby incorporated herein by reference and made a part hereof) and supersedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, with respect to such matters. HBS's quotation, acknowledgment or invoice constitutes HBS's offer to sell solely in accordance with the exact terms and conditions hereof, and supersedes all previous written and oral quotations, representations and/or agreements. Acceptance can be made by Buyer by any commercially reasonable means, including but not limited to Buyer's issuance of an order, acceptance of HBS's quotation, acceptance of Goods provided hereunder, or acknowledgment or return of HBS's acknowledgment form. Acceptance hereof by Buyer is expressly limited to the exact terms hereof. If Buyer shall use its own purchase order or another form to order from HBS, such form shall be used for convenience only and shall constitute Buyer's unconditional agreement to these terms and conditions. Any inconsistent or additional terms or conditions contained therein are expressly objected to by HBS. Where this Agreement is found to be an acknowledgment, if such acknowledgment constitutes an acceptance of an offer, such acceptance is expressly made conditional upon Buyer's assent to the terms of such acknowledgment, and acceptance of any part of Products delivered by HBS shall be deemed to constitute such assent by Buyer.

**2. Orders and Delivery.** All Orders are subject to acceptance by HBS and Customer may not cancel or reschedule Orders for Goods without HBS's consent. The Goods will be delivered within a reasonable time after HBS's acceptance of Buyer's Order, subject to availability of finished Goods. HBS reserves the right at any time and from time to time to discontinue and/or modify Goods without notice to Buyer. HBS may allocate Goods among any or all purchasers on such basis as it deems fair and practical without liability for any failure of performance resulting therefrom. All shipping dates are approximate only, and HBS will not be liable for any loss or damage resulting from any delay in filling any order, failure to deliver or delay in delivery or damage in transit. However, if HBS delays shipment of any goods more than thirty (30) days after the estimated delivery date (the "Delayed Shipment Date"), then Buyer may, as its sole remedy therefor, cancel the related purchase order regarding the delayed Goods by giving HBS notice within five (5) days of the Delayed Shipment Date. Subject to Buyer's rights in the aforementioned sentence, no delay in the shipment or delivery of any Goods relieves Buyer of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Goods. All shipments of Goods shall be considered delivered to Buyer, and title, ownership and risk of loss of the Goods shall transfer and pass to Buyer Ex Works (Incoterms® 2010) HBS's facility. HBS 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 Order.

**3. Inspection and Rejection of Nonconforming Goods.**

(a) It is Buyer's responsibility to verify both the count and condition of the shipped Goods prior to signing for the receipt of the shipment and shortages and damages should be listed on the delivering carrier's bill of lading at the time of delivery. HBS is not responsible for any shortages or damages caused by the delivering carrier. Claims should be filed with the delivering carrier within three (3) days of receipt of the damaged or shorted delivery. Buyer shall inspect the Goods within three (3) days of receipt (the "Inspection Period"). Buyer will be deemed to have irrevocably accepted the Goods unless it notifies HBS in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation required by HBS. "Nonconforming Goods" means only the following: (i) the Goods received do not conform to the make/model/product on Buyer's Order; or (ii) on visual inspection, Buyer reasonably determines that the Goods are damaged, shorted, or other discrepancy which was caused solely by HBS or the original manufacturer. Buyer's rejection of any shipment for any reason other than for Nonconforming Goods shall be a breach of Buyer's Order and this Agreement.

(b) If Buyer timely notifies HBS of any Nonconforming Goods, HBS shall determine, in its sole discretion whether the Goods are Nonconforming Goods. If HBS determines that the Goods are Nonconforming Goods, it shall either, in its sole discretion: (i) replace such Nonconforming Goods with conforming Goods; or (ii) credit the price for such Nonconforming Goods. Buyer must return, at its expense and risk of loss, the Nonconforming Goods to HBS's facility. Buyer may not return any Nonconforming Goods without a return authorization ("RA") number. Buyer may not return and RAs will not be granted for damage, shortage, or other discrepancy of Goods created by Buyer, the carrier or freight provider, or any other third party. Nonconforming Goods must be in original manufacturer's shipping cartons or equivalent. At HBS's discretion, HBS shall return all Goods not eligible for return to Buyer, freight collect, or hold Goods for Buyer's account at Buyer's expense. If HBS exercises its option to replace Nonconforming Goods, HBS shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer the replaced Goods in accordance with Section 2.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 3(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as expressly contained in this Agreement, 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 HBS.

**4. Price.** Prices are subject to change at any time. HBS's quoted prices apply for thirty (30) days or as otherwise stated in the quote; however, HBS may increase the prices if HBS's costs increase or because of other circumstances beyond HBS's reasonable control. Prices are for the Goods only and do not include taxes, impositions of any other charges, fees, insurance costs, shipping charges, and duties imposed by any government authority. Unless otherwise agreed to by HBS in writing, Buyer is responsible for any additional charges, fees and taxes.

**5. Payment Terms.** Buyer shall pay all invoiced amounts due to HBS in U.S. dollars by wire transfer or check within thirty (30) days from the date of HBS's invoice; provided, however, that HBS reserves the right, in its sole discretion, to require full payment before entry, shipment, or delivery of any Order. Buyer shall pay HBS a service charge of \$25.00 for all payments returned by Buyer's bank for any reason. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month (18% per annum) or the highest rate permissible under applicable law. Buyer shall reimburse HBS for all costs incurred in collecting any late payments or other amounts due hereunder, including, without limitation, court costs and attorneys' fees. In addition to all other remedies available under these Terms or at law (which HBS does not waive by the exercise of any rights hereunder), HBS shall be entitled to suspend the delivery of any Goods and its performance hereunder if Buyer fails to pay any amounts when due. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with HBS, whether relating to HBS's breach, bankruptcy or otherwise. HBS may recover for each delivery hereunder as a separate transaction, without reference to any other delivery. Termination or suspension of an Order or the retaking of any Goods shall not prejudice any claims of HBS for the price of Goods or for damages other than the reduction of any such claims by the value to HBS of any Goods retaken. Buyer shall notify HBS in writing of any dispute with any invoice (along with a reasonably detailed dispute description) within ninety (90) days from the date of the invoice. Buyer will be deemed to have accepted all invoices for which HBS does not receive timely notice of disputes and shall pay all undisputed amounts due under these invoices within the period set out in this Section. The parties shall seek to resolve all disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any dispute, including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts in accordance with the terms and conditions of this Agreement.

**6. Unsatisfactory Credit Status.** Each issuance of an Order to HBS constitutes Buyer's representation and warranty that Buyer can pay for the Goods identified in the Order in accordance with the terms of this Agreement. Buyer shall furnish HBS with such information accurately and fairly evidencing Buyer's financial condition as HBS may, from time to time, reasonably request. Throughout the term of any Order, Buyer shall be in compliance with all loan covenants and other obligations to its lenders. Buyer shall notify HBS immediately of any and all events that have had or may have a material adverse effect on Buyer's business or financial condition, including any change in management, sale, lease or exchange of a material portion of Buyer's assets, a change of control of ownership, or breach of any loan covenants or other material obligations of Buyer to its lenders. If, at any time, HBS determines in its sole but reasonable discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to HBS's rights under this Agreement, at law or in equity, HBS may without liability or penalty, take any of the following actions: (a) modify the payment terms described above for outstanding and future purchases, including requiring Buyer to pay cash in advance or cash on delivery; (b) reject any Order received from Buyer or cancel any previously accepted Order; (c) delay any further shipment of Goods to Buyer and stop delivery of any Goods in transit in the possession of a common carrier or bailee and cause the Goods in transit to be returned to HBS; (d) immediately terminate any Order or this Agreement; or (e) accelerate the due date of all amounts owing by Buyer to HBS. No actions taken by HBS under this Section (nor any failure to act under this Section) constitute a waiver by HBS of any of its rights to enforce Buyer's obligations under this Agreement, including the obligation of Buyer to make payments as required under this Agreement.

**7. Security Interest.** To secure Buyer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Buyer to HBS, Buyer hereby grants to HBS 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 Uniform Commercial Code. HBS may file a financing statement for the security interest and Buyer shall execute any statements or other documentation necessary to perfect HBS's security interest in the Goods. Buyer also authorizes HBS to execute, on Buyer's behalf, statements or other documentation necessary to perfect HBS's security interest in the Goods. HBS is entitled to all applicable rights and remedies of a secured party under applicable law.

**8. Provisions Applicable to Third-Party Parts and Equipment Sales.** All Goods which are parts or equipment not manufactured by HBS ("Equipment") and sold hereunder shall be governed by these additional terms of this Section 8.

(a) All Equipment sales are final. Equipment may only be returned for credits on items that have not been used and must be new, of current design, complete and in its original packaging, and in good condition, as determined by HBS, in its sole discretion. No Equipment may be returned without an RA number. All electronic devices, including circuit boards, will not be accepted for return if opened. Credits shall be issued for any Equipment deemed acceptable by HBS at the invoiced purchase price, less any discounts taken. No refunds will be issued. All Equipment purchased in error (ordered in excess or incorrectly ordered) must be returned within ninety (90) days of purchase to receive credit for the full purchased amount. Equipment returned in excess of ninety (90) days will be subject to a 25% restocking fee. All Equipment must be returned freight pre-paid to HBS's facility detailed in the RA. At HBS's discretion, HBS shall return to Buyer all Equipment not eligible for return or returned without an RA, freight collect, or hold such Equipment for Buyer's account at Buyer's expense.

(b) Any Equipment manufactured by Graco deemed covered by a Graco warranty shall be handled by obtaining an RA from HBS and completing any additional steps as may be necessary to satisfy the warranty status of such Equipment. Graco may require Equipment be sent to them by Buyer for inspection.

(c) All other Equipment warranties (such as generators, compressors, air dryers, etc.) must be filed through the respective Equipment manufacturer. Equipment warranty registration, if applicable, is the sole responsibility of the Buyer to file, complete, and obtain.

#### 9. Limited Warranty and Disclaimer.

(a) HBS makes certain limited warranties regarding certain spray foam insulation Goods solely to and for the building owner's benefit, being HBS's standard limited warranty in force when the Good is delivered and installed as set out in the applicable written documents titled Limited Lifetime Warranty on HBS's website: [www.HBS.com](http://www.HBS.com) (the "Limited Warranties"). No warranty is extended to Buyer under this Agreement.

(b) EXCEPT FOR THE LIMITED WARRANTIES TO BUILDING OWNERS IN SECTION 9(A),

(i) NEITHER HBS NOR ANY PERSON ON HBS'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (1) MERCHANTABILITY; (2) FITNESS FOR A PARTICULAR PURPOSE; (3) NON-INFRINGEMENT; OR (4) PERFORMANCE OF GOODS TO LOCAL BUILDING CODES OR COUNTRY OF IMPORT, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (ii) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY HBS, OR ANY OTHER PERSON ON HBS'S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION 9(A).

(c) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 9(a). For the avoidance of doubt, HBS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) Buyer's EXCLUSIVE remedy against HBS for any claim for or arising out of any Goods tendered to Buyer is the repair or replacement of the Goods, or alternatively, at HBS's sole election, a credit of the invoiced purchase price less any discounts taken.

(e) Buyer agrees that it shall not make any representations to customers, potential customers or any third party with regards to the Goods or any aspect or functionality thereof beyond the Limited Warranties.

#### 10. Limitation of Liability.

(a) IN NO EVENT SHALL HBS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL HBS'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, EXCEED THE PRICE OF THE GOODS OR SHIPMENT AT ISSUE.

(c) It is expressly understood that HBS is not responsible for and will not be held liable for damage and/or injury caused to buildings, contents, products or persons by reason of negligence of the Buyer or any other party or its agent in the installation of any of the Goods sold to Buyer by HBS, including any damage or injury that may arise because of a failure to following HBS's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods provided at [www.HBS.com](http://www.HBS.com).

(d) As to the Goods sold hereunder, Buyer releases HBS from any liability for personal injuries, known or unknown and damage to real or personal property caused by or arising from the Goods sold hereunder and agrees not to sue HBS under any theory of liability in tort, negligence, contract or otherwise for any claim or demand for personal injuries and property damage which in any manner arises out of the sale, use, application, transportation or otherwise of the Goods sold hereunder. The foregoing disclaimers of warranty in Section 9 and disclaimers of liability herein shall be binding upon the Buyer and any successors in title, assigns, transferees and ultimate users.

**11. Notice of Claims.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 16, WITHIN NINETY (90) DAYS AFTER BUYER LEARNS, OR SHOULD REASONABLY HAVE LEARNED, OF ANY CLAIM WITH RESPECT TO ANY GOODS, BUYER WILL INFORM HBS IN WRITING OF THE CLAIM OR THE CLAIM IS WAIVED.

**12. Indemnification.** BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS HBS AND ITS PARENT COMPANIES, AFFILIATED COMPANIES, OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, DEMANDS, DELAYS, ACTIONS, DAMAGES, LIABILITIES AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "CLAIMS") FOR BUYER'S BREACH OF AN ORDER OR THESE TERMS, OR FOR DEATH OR INJURY TO ANY PERSON OR PERSONS AND FOR DAMAGE OR LOSS OF ANY PROPERTY CAUSED BY, ARISING FROM OR IN ANY WAY CONNECTED WITH BUYER'S OR ITS CUSTOMERS' USE OF THE GOODS PURCHASED HEREUNDER, OR ANY ACTS OR OMISSIONS OF BUYER OR ITS CUSTOMERS, SUB-CONTRACTORS, AGENTS OR EMPLOYEES, AND REGARDLESS OF WHETHER ANY SUCH DEATH, INJURY, OR PROPERTY DAMAGE IS ALSO CAUSED IN PART BY THE NEGLIGENCE OR OTHER LIABILITY OF HBS. IF BUYER SHOULD FAIL TO ASSUME ITS OBLIGATIONS HEREUNDER WITHIN FOURTEEN (14) DAYS OF RECEIPT OF NOTICE, INCLUDING BUYER'S OBLIGATIONS TO PURSUE AND PAY FOR THE DEFENSE THEREOF, HBS WILL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO DEFEND ITSELF AND REQUIRE FROM BUYER REIMBURSEMENT OF ANY AND ALL REASONABLE COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES). BUYER MAY NOT ENTER INTO ANY SETTLEMENT OR COMPROMISE OF ANY CLAIMS WITHOUT THE EXPRESS WRITTEN CONSENT OF HBS.

**13. Compliance with Law.** Buyer shall comply with all applicable laws, regulations and ordinances applicable to this Agreement, the Goods or the operation of its business. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement and for the proper utilization of the Goods. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance unless agreed to otherwise by HBS in writing.

**14. Provisions Specific to Resale or Installation of Spray Polyurethane Foam.** If Buyer is a reseller or installer of spray polyurethane foam insulation, Buyer will comply with the additional provisions of this Section 14. Buyer and Buyer's personnel who handle or install spray polyurethane foam products from HBS must be certified by the Spray Polyurethane Foam Alliance ("SPFA") Professional Certification Program prior to handling or installing any spray polyurethane foam product from HBS. Buyer is responsible for the safe application and installation of all Goods purchased from HBS, and in furtherance of this obligation, Buyer agrees to:

(a) Provide and maintain spray equipment to process and apply HBS spray foam insulation systems in accordance with HBS Product Application Guides and Technical Data Sheets;

(b) Apply HBS spray foam in accordance with The Center For Polyurethane Industry's Guidance on Best Practices for the Installation of Spray Polyurethane Foam and in accordance with SPFA Professional Certification training;

(c) Comply with all current product labels, Safety Data Sheets, Technical Data Sheets, and ICC-ESR Reports, as well as all Occupational Safety Hazard Administration (OSHA) and National Institute for Occupational Safety and Health (NIOSH) regulations regarding spray polyurethane foam application, including but not limited to, providing appropriate personal protective equipment for all personnel on the jobsite;

(d) Provide and use workplace ventilation during and after the spray process in accordance with the Guidance on Best Practices for the Installation of Spray Polyurethane Foam;

(e) Adhere to the HBS Flushing Procedure;

(f) Abide by the minimum and maximum thickness and temperature requirements designated on the Technical Data Sheets for spray foam products;

(g) Keep accurate records of jobsite activity and information in accordance with the Guidance on Best Practices for the Installation of Spray Polyurethane Foam;

(h) Never mix A-side Iso, also known as Isocyanate and A-PMDI, with water;

(i) Train all personnel to comply with this Section 14; and

(j) Keep and maintain in effect at Buyer's sole cost and expense comprehensive general liability, broad form property damage and personal injury insurance with coverage to include premises operations, product liability, completed operations, hazard, contractual liability (specifically insuring the liability assumed under this Agreement) with minimum limits of liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, written by a company having an A.M. Best rating of A-VII or higher. Buyer will cause each policy to provide that it is primary insurance to and non-contributing with any other insurance carried by HBS and shall list HBS as an additional insured. Buyer shall cause all insurance policies to contain a waiver of subrogation in favor of HBS. The provisions of this insurance requirement shall not be construed to limit in any way Buyer's indemnity or other obligations in this Agreement.

Buyer may access the documents referenced in italics above on the Website, and such documents are incorporated herein by reference and as an integral part of this Agreement, to the same extent as if they were set forth verbatim herein. HBS will also provide Buyer with a physical copy of any document referenced in italics above upon Buyer's written request.

**15. Provisions Specific to Other Products.** Buyer agrees that it has read and signed HBS's Health, Safety and Product Stewardship Program Compliance Agreement, and has implemented or will implement at the time of handling, application, or resale of the Goods, as applicable, its own comprehensive product safety program compliant with such agreement, designed to ensure compliance with all industry standards and practices for health, safety and product stewardship, for the protection of Buyer's employees, contractors and customers, and/or consumers. Buyer further represents and warrants that it has implemented or will implement at the time of handling, application, or resale of the Goods, as applicable, guidelines for, and will provide, comprehensive training and continuing education services for its employees, contractors, and customers, as applicable, in line with industry standards and practices.

**16. Termination.** In addition to any remedies that may be provided under these Terms, HBS may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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.

**17. Waiver.** No modification, change or waiver by HBS of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by an authorized officer of HBS. Any purported modification, change or waiver failing to comply with the immediately preceding sentence shall not be binding on HBS. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single, partial exercise of any right, remedy, power or privilege hereunder (or failure to exercise any right, remedy, power or privilege hereunder) precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**18. Confidential Information.** All non-public, confidential or proprietary information of HBS, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by HBS 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 HBS in writing. Upon HBS's request, Buyer shall promptly return all documents and other materials received from HBS. HBS shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is established by documentary evidence to be: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.

**19. HBS Trademarks.** Subject to the terms and conditions of this Agreement, HBS hereby grants Buyer a non-exclusive, non-transferrable and non-sublicensable license to use HBS's Trademarks (defined hereafter) solely in connection with the promotion, advertising and resale of the Goods in accordance with the terms and conditions of this Agreement. "Trademark" means the rights in and to U.S. and foreign trademarks, service marks, trade dress, brand names, and logos, in each case whether registered or unregistered, owned by HBS or its affiliates. Other than the express licenses granted by this Agreement, HBS grants no other right or license to Buyer, by implication, estoppel or otherwise, to any intellectual property rights of HBS and its affiliates. Buyer will promptly discontinue the display or use of any Trademark or to change the manner in which a Trademark is displayed or used when requested by HBS. Upon termination of this Agreement, Buyer's rights under this Section cease immediately, and Buyer shall immediately cease all display, advertising, promotion and use of all of HBS's Trademarks and shall not thereafter use, advertise, promote or display any trademark, trade name or product designation or any part thereof that is similar to or confusing with HBS's Trademarks or with any trademark, trade name or product designation associated with HBS or any Goods.

**20. Additional Terms Applicable to Credit Accounts.** Buyer agrees that the individuals signing any application for credit with HBS are authorized to bind the Buyer to the terms and conditions of this Agreement. Buyer authorizes HBS to contact consumer credit reporting agencies, all bank, credit and trade references provided to HBS by Buyer to verify Buyer's credit standing, and Buyer authorizes the release of the aforesaid information to HBS. Buyer certifies that its credit account will be used for business purchases only. Buyer's credit limit may be increased or decreased at the discretion of HBS, without written notice and without affecting any personal guarantees. Buyer agrees to provide HBS with prompt written notice of any change in Buyer's name, address, ownership, or form of business entity, and such notice should be mailed to HBS (USA) Inc., 3315 E. Division Street, Arlington, TX 76011, Attention: Director of Credit Operations, faxed to Director of Credit Operations at (817) 633-2000, or emailed to [Credit@HBS.com](mailto:Credit@HBS.com). Buyer agrees that all funds owed to Buyer from anyone or received by Buyer to the extent those funds result in whole or in part from the Goods supplied by HBS shall be held in trust for the benefit of HBS to the extent of any open credit from time to time (the "Trust Funds"). Buyer agrees it has no interest in Trust Funds and to promptly account for and pay to HBS all such Trust Funds. Buyer irrevocably assigns to HBS any interest it may have in its Trust Fund account receivable. Buyer shall comply with all material contracts or agreements to which Buyer is a party or to which any of its material assets are bound applicable to this Agreement, the Goods or the operation of its business.

**21. Environmental Attributes.** Unless otherwise agreed in writing by both parties, Buyer recognizes and agrees that any and all environmental credits, including but not limited to carbon offset credits, or other rights, titles, privileges, licenses or interests with respect to the sale of any of the Goods, including without limitation any blowing agent, shall remain the property of HBS. Buyer further recognizes and agrees that it has not assigned any additional environmental and/or carbon offset credits or other rights, titles, privileges, licenses or interests that may otherwise arise out of its or any of its customers' use of the Goods and/or any HBS spray foam systems.

**22. Force Majeure.** HBS shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of HBS 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, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), restraints or delays affecting motor carriers, lack of motor carrier availability, inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**23. OFAC Compliance.** Buyer acknowledges that HBS is subject to the U.S. economic sanctions and trade embargoes administered by the Office of Foreign Asset Control of the U.S. Department of the Treasury ("Economic Sanctions Laws"), which prohibit or substantially restrict transactions or other dealings with or involving certain countries and parties ("Embargoed Targets"). Buyer agrees to comply with all Economic Sanctions Laws and agrees not to engage in any transactions or dealings that could cause Buyer or HBS to violate the Economic Sanctions Laws. Without limiting the generality of the foregoing, Buyer shall not (i) directly or indirectly export, re-export, transship or otherwise deliver the Goods or any portion of the Goods to an Embargoed Target or (ii) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Law.

**24. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of HBS. 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. This Agreement is binding on and inures to the benefit of the parties and their respective permitted successors and permitted assigns.

**25. Relationship of the Parties.** The parties to this Agreement are independent contractors and nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, franchise, business opportunity 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.

**26. No Third-Party Beneficiaries.** Except as set forth in the immediately following sentence, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Buyer and HBS hereby designate HBS's parent companies, affiliated companies, officers, agents and employees as third-party beneficiaries of Section 12 of this Agreement having right to enforce Section 12.

**27. Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**28. Submission to Jurisdiction.** Buyer agrees that any legal suit, action or proceeding of any kind whatsoever arising out of or relating to this Agreement and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud or statutory claims, shall be instituted in the federal courts of the United States of America located in Harris County, Texas, or the courts of the State of Texas located in Montgomery County, and Buyer agrees to the exercise of jurisdiction over it by such federal or state courts in any such suit, action or proceeding. A final judgment in any legal suit, action or proceeding is conclusive and maybe enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**29. Waiver of Jury Trial.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**30. Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth within an Order or to such other address that may be designated by the receiving party in writing. All Notices shall be deemed given to a party:

(i) when delivered by personal delivery; (ii) when delivered by a nationally recognized overnight courier (with all fees pre-paid); (iii) when sent by facsimile with confirmation of transmission, or (iv) three days after mailing if sent by certified or registered mail, return receipt requested.

**31. Severability.** If any term or provision of this Agreement is 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. Upon the determination that any provision is invalid, illegal or unenforceable, the court may modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**32. Attorneys' Fees.** HBS shall be entitled to recover reasonable attorneys' fees and costs of court in any action to enforce this Agreement. Without limiting the generality of the foregoing, Customer will be responsible for and agrees to promptly pay any fees or expenses, including without limitation attorneys' fees, collection agency fees, and litigation expenses, incurred by HBS in connection with collecting any and all amounts owed to HBS under this Agreement.

**33. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following Sections: 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 18, 19, 21, 25, 26, 27, 28, 29, 32 and 33.

**34. Interpretation.** For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument, website or other document means the agreement, instrument, website or other document as amended, supplemented and modified from time to time; and (z) to a statute means the statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be interpreted without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set out verbatim herein. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**35. Further Assurances.** On HBS's request, Buyer shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts necessary to give full affect to any Order or this Agreement.

**36. Counterparts.** Any written agreements between HBS and Buyer may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement and a signed copy delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of the agreement.