

## To Buyer: TERMS AND CONDITIONS

The term “H\*E” means H\*E Engineered Equipment Co., Inc. and the customer or person or entity buying products (“Products”) from H\*E is referred to as the “Purchaser”. H\*E and Purchaser are sometimes referred to collectively as the “Parties” or individually as a “Party”.

General Terms and Conditions of Supply – This document (the “Terms and Conditions”) shall be deemed to be an integral part of the acceptance of any purchase order (“Purchase Order”) by H\*E. These Terms and Conditions, the Purchase Order, and all documents incorporated by reference herein or therein, constitute the entire agreement (“Agreement”) between Purchaser and H\*E regarding such sale and the acceptance of any Purchase Order by H\*E is expressly limited to and conditioned upon Purchaser’s acceptance of, and assent to, these Terms and Conditions. Any understandings, agreements, course of dealing or performance, transactions, or usage of trade that purport to modify, vary, explain, supplement or contradict this Agreement do not come into force unless and until confirmed in writing by H\*E and signed by its President. All proposals, deliveries, or other auxiliary services are provided exclusively on the basis of these Terms and Conditions. Terms and conditions submitted by Purchaser are hereby contradicted and not recognized even if such terms and conditions are not expressly contradicted again upon receipt. These Terms and Conditions are deemed to be accepted at the latest upon delivery of the Products. H\*E reserves the right in its sole discretion to refuse to accept any Purchase Order for any reason.

1. **PRICES.** All prices are subject to acceptance by H\*E at the time the Purchase Order is submitted to H\*E by Purchaser. All prices are net and do not include any taxes (including but not limited to, value added taxes, import fees and taxes, and any other city, county, state, or federal taxes where applicable), freight charges, insurance, storage costs, special handling, demurrage, or any other similar charges, costs, or fees.

2. **PLANS AND SPECIFICATIONS.** The plans and specifications stated in the Purchase Order shall be the plans and specifications to which the Products shall conform. Purchaser hereby agrees that the Product plans and specifications included in the Purchase Order are acceptable to Purchaser for all Products to be delivered under such Purchase Order and that no other plans or specifications on any other document shall in any way influence the Products to be delivered under such Purchase Order or the conformance of such Products to the Purchase Order. Purchaser expressly acknowledges and agrees that it has not received or relied on any technical advice from H\*E or its employees. Any Product recommendations are based on information supplied by the Purchaser and the manufacturer of such Products and Purchaser is and shall be solely responsible for the choice of Products and the appropriateness of such Products for Purchaser’s intended use.

Products that require assembly by H\*E will require a design review by Purchaser prior to assembly by H\*E, and Purchaser will be required to accept the design plans to ensure that such products, as assembled, will meet all design specifications required by Purchaser. H\*E will not provide any technical advice or engineering opinions with respect to such Products or assembly, and Purchaser shall be solely responsible for the choice of Products and the appropriateness of such Products for Purchaser’s intended use including whether such Products will meet requirements and specifications required by Purchaser.

3. **TERMS OF PAYMENT.** Upon Purchaser’s credit approval by H\*E, and unless otherwise specifically stated in the Purchase Order and agreed to in writing by H\*E, payment in full for each invoice issued pursuant to a Purchase Order shall be made to H\*E within thirty (30) days from the date of such invoice. An additional transaction fee will apply to any payment made with a credit card to the extent

permitted by law. H\*E reserves the right at any time to require Purchaser to provide adequate assurance of its ability to pay for any Purchase Order, the adequacy of such assurance to be determined in the sole discretion of H\*E. In the instance Purchaser is unable or unwilling to provide such assurance, H\*E reserves the right to suspend shipment of all Products until such assurance is provided to H\*E by Purchaser. If any invoice remains unpaid after 30 days from the date of such invoice, H\*E reserves the right to change the payment terms for the corresponding Purchase Order as well as all future Purchase Orders from the Purchaser in H\*E's sole discretion.

4. **SHIPMENT AND RISK OF LOSS.** Unless otherwise agreed to by the Parties, all shipments are FCA, Incoterms. Any additional charges incurred for shipping by Purchaser-designated carriers, specialized carriers or Purchaser-requested shipments beyond reasonable dispatch are the exclusive responsibility of Purchaser. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment by H\*E to reflect changes in transportation charges. Unless otherwise agreed H\*E reserves the right to select the mode of transportation. If delivery of the products requires specialized transportation equipment, including platforms or low beds, Purchaser shall bear all such costs and if H\*E under any circumstances incurs those costs to ship the Product, Purchaser agrees to refund all amounts paid. Risk of loss for the Products sold hereunder shall pass to Purchaser pursuant to the designated Incoterm and any claims for shortage or damages suffered thereafter are the responsibility of Purchaser and shall be submitted by Purchaser directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery. Neither Purchaser nor the consignee shall have the right to divert or reconsign such shipment to any carrier or destination other than specified in the bill of lading without H\*E's prior written consent.

5. **DELIVERY.** While H\*E will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by H\*E on the Purchase Order, all shipping dates are approximate and not guaranteed, as H\*E provides shipping dates based on the shipping schedules provided by the manufacturer and does not possess the means to control the manufacturer's shipping schedules or their adherence thereto. In the instance that the manufacturer of Products to be delivered pursuant to a Purchase Order indicates its inability to meet the expected shipping date, and such inability will change the delivery date specified on such Purchase Order, H\*E agrees to notify Purchaser within a reasonable amount of time of the change in such shipping date. H\*E shall not be liable for any penalties for delay or claims for damages, costs or expenses related to such delay including but not limited to actual, compensatory, consequential, or punitive damages regardless of whether such delay exposes Purchaser to any similar damages under any agreement it has with any third party. H\*E reserves the right to make partial shipments. Each partial shipment shall constitute a separate contract and Purchaser does not have the right to refuse any partial shipment. Making a partial shipment does not constitute repudiation of the underlying contract even if the contract called for Products to be delivered in one shipment. H\*E, at its option, shall not be bound to tender delivery of any Products for which Purchaser has not provided shipping instructions and other required information.

6. **PACKING AND INVOICING.** Every document or communication relevant to a Purchase Order shall include the Purchase Order number. Each shipment of Products shall include a packing slip detailing the contents of such shipment. Invoices shall be rendered in hard copy form and sent via US mail or in electronic form and sent via email based on the requirements of the Purchase Order and shall be directed to the billing address as specified in the Purchase Order. Purchase Orders shall be invoiced individually and in no instance will an invoice cover more than one Purchase Order. All electronic transmissions made pursuant to a Purchase Order shall be deemed by the Parties to be the same as written communications for all purposes and for all applications of law (including any applicable statute of frauds) provided, however, that any requirement under any Purchase Order or these Terms and Conditions that require agreement,

acceptance, confirmation or assent in writing shall require the signature of the President of H\*E in order for such requirement to be deemed fulfilled.

7. **CANCELLATION.** Purchaser shall have the right to cancel any Purchase Order, or any part thereof, at any time, subject to the terms and conditions of this Section 7, by providing written notice to H\*E of such cancellation. H\*E has the right to cancel any Purchase Order upon (i) breach by the Purchaser of these Terms and Conditions, (ii) failure by Purchaser to make timely payments as required by the Agreement, (iii) H\*E's reasonable belief of Purchaser's inability or unwillingness to fulfill any of its obligations under the Agreement or (iv) Purchaser becoming insolvent or making an assignment for the benefit of creditors, or if there shall be instituted by or against Purchaser any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law.

In the event of cancellation by either Purchaser or H\*E, Purchaser will be responsible for all applicable fees, expenses, costs, and charges incurred by H\*E as a result of such cancellation which fees, expenses, costs, and charges shall not in any case exceed the Purchase Order price. Upon H\*E's receipt of a notice of cancellation by Purchaser or upon provision of a notice of cancellation by H\*E to Purchaser, H\*E shall immediately stop work. H\*E shall assign to the Purchaser all its rights, title and interest in fabricated and un-fabricated parts, work in process, completed work, supplies and other material produced or acquired for the work terminated. H\*E shall submit a complete inventory of Products in process no later than thirty (30) days from the date of cancellation. The Purchaser shall give H\*E shipping or other disposition instructions for all items on the inventory list. Simultaneously, Purchaser shall pay H\*E the Purchase Order price for all completed Products, not previously paid for, adjusted for any saving of freight and other charges. In addition, Purchaser shall pay H\*E without duplication, the reasonable and necessary incurred costs of (i) producing partially completed Products; (ii) settling and paying suppliers; (iii) storage, transportation and other costs of preserving and protecting work in process; (iv) disposition of termination inventory in accordance with Purchaser's instructions; (v) profit on partially completed Products, and (vi) a restocking fee as required by H\*E. In no event shall Purchaser be liable for or obligated to pay or compensate H\*E for: defective or non-conforming Products; unabsorbed overhead; anticipated profit; or consequential damages of any kind.

8. **RETURNS OF PRODUCTS AND MATERIALS.** For the purpose of this Section, "Returns" shall include (i) return of raw material to H\*E, (ii) return of Products to H\*E that are rejected for nonconformance, (iii) return of defective Products to H\*E in the instance that H\*E instructs Purchaser to send such defective Products to H\*E instead of the manufacturer of such Products, and (iv) return of Products to H\*E for credit toward amounts owed now or in the future by Purchaser to H\*E. No Returns shall be made to H\*E unless Purchaser has first contacted H\*E regarding such Return and received instructions and written consent from H\*E in the form of a Return Material Authorization ("RMA"). All Returns must be accompanied by an RMA which will be provided to Purchaser by H\*E after the above required contact has been initiated by the Purchaser. Unless expressly stated in the RMA, all Returns, except for rejections made for nonconforming Products, shall be shipped to H\*E freight prepaid on Purchaser's account.

All Products returned to H\*E must be free of any and all contaminants. Returns of raw material and Products that have been put into service or removed from the original packaging may require appropriate documentation of service and certifications of cleaning procedures as outlined in the RMA. Failure to provide such documentation as required by the RMA will void such Returns and H\*E will have no further obligation with respect to such Returns.

Products returned for credit must be returned new and unused and in the manufacturer's original packaging without damage and must include any and all documentation originally provided along with such Product including without limitation product instructions provided by the manufacturer so that such Product is suitable for resale. The amount of credit, if any, for such Returns will be detailed on the RMA and may be reduced by fees and charges for restocking, inspection, outbound shipping or any other reasonable cost incurred by H\*E in processing such Return. Any credit given to Purchaser as a result of such Return will be a credit toward amounts owed on the corresponding Purchase Order or against amounts owed on future Purchase Orders, but in no instance will H\*E give Purchaser cash or its equivalent for such Returns.

9. **INSPECTION & REJECTION.** All deliveries of Products by H\*E to Purchaser shall be subject to inspection by Purchaser at the time and place of delivery and Purchaser shall have the right to reject any Product that does not conform to the Purchase Order in a material way. Upon rejection of such non-conforming Products, H\*E shall have the option to correct such non-conformance at H\*E's sole cost and expense or to refund the portion of the Purchase Order price which corresponds to such non-conforming Product. Purchaser shall not have the right to reject Products that conform to the Purchase Order even if some of the Products delivered under such Purchase Order are deemed to be non-conforming. Acceptance of Products by Purchaser at the time and place of delivery will not invalidate any warranties provided by Section 10 of these Terms and Conditions.

10. **LIMITATION ON WARRANTIES.**

(a) Purchaser and H\*E agree that H\*E is not the manufacturer of the Products to be provided under any Purchase Order. The Products provided for under any Purchase Order will include the manufacturer's warranty which will be passed through from H\*E to Purchaser. H\*E agrees to pass through or assign the rights provided to H\*E by such manufacturer for all Products provided to Purchaser under any Purchase Order. H\*E shall use its best efforts to ensure that such pass-through warranty warrants the Products for a period commencing on the date of delivery of the Products and ending twelve (12) months from the date that such Products are shipped to the Purchaser against defects in materials, workmanship, and design, and that the Products will conform in all material respects to the requirements of the Purchase Order which requirements will be communicated to the manufacturer by H\*E, and that the manufacturer will comply with all applicable laws and regulations governing the design or manufacture of such Products. H\*E expressly does not warrant such Products beyond the scope of the manufacturer's pass-through warranty and such pass-through warranty from the manufacturer shall be the sole warranty provided in connection with the sale of the Products. Purchaser agrees that its sole remedy for defects in Products provided in connection with any Purchase Order or failure of such Products to conform to Purchase Order requirements or specifications shall be that provided for by the pass-through warranty and Purchaser will look solely to the manufacturer to recover for such defect or failure.

(b) During the warranty period, manufacturer, or H\*E as designee for manufacturer, shall promptly either repair or replace any Products furnished by H\*E which fail to conform to the requirements of the Purchase Order in accordance with the manufacturer's pass-through warranty.

(c) Where it is not practical to return Products to manufacturer for repair during the warranty period, manufacturer, or H\*E as designee for manufacturer, shall perform such warranty work at Purchaser's facility where the Products are located, at H\*E's option.

(d) H\*E warrants that all Products shall, when delivered to Purchaser, be free and clear of all liens, claims, charges or encumbrances of every kind.

(e) H\*E warrants that all Products delivered under any Purchase Order shall be new, and that H\*E has the right and authority to sell such Products to Purchaser.

EXCEPT AS EXPRESSLY SET FORTH IN THE PURCHASE ORDER OR THESE TERMS AND CONDITIONS, H\*E MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR ANY INTENDED USE OR PURPOSE. H\*E'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) FOR PRODUCTS SHALL BE LIMITED TO REPAIRING OR REPLACING PRODUCTS OR PARTS FOUND TO BE DEFECTIVE, OR AT H\*E'S OPTION, TO REFUNDING THE PURCHASE PRICE OF SUCH PRODUCTS OR PARTS. AT H\*E'S REQUEST, PURCHASER WILL SEND, AT PURCHASER'S SOLE EXPENSE, ANY ALLEGEDLY DEFECTIVE PRODUCTS TO THE PLANT OF THE MANUFACTURER OF SUCH PRODUCTS IN ACCORDANCE WITH THE MANUFACTURER'S WARRANTY.

**11. LIMITATION OF REMEDY AND LIABILITY. H\*E SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL H\*E'S LIABILITY TO PURCHASER EXTEND BEYOND OR EXCEED THE PRICE PAID BY PURCHASER FOR THE SPECIFIC PRODUCTS PROVIDED BY H\*E GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. PURCHASER AGREES THAT IN NO EVENT SHALL H\*E'S LIABILITY TO PURCHASER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to: liquidated damages paid or payable to any third party pursuant to a contract or agreement between Purchaser and such third party; loss of anticipated profits; business interruption; loss of use, revenue, reputation and data; costs incurred, including without limitation, for capital, labor, fuel, or power; and loss or damage to property or equipment. Purchaser expressly acknowledges and agrees that H\*E has set its prices and entered into the Agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocates the risk between H\*E and Purchaser and form a basis of this bargain between the Parties.

**12. CONFIDENTIALITY.** In the course of the relationship between the Parties, each Party may acquire valuable trade secrets, proprietary data, and other confidential information of the other Party including without limitation drawings, specifications, data, goods, technical information, information on processes, customer lists, customer identities, and other tangible and intangible property (collectively, the "Confidential Information"). Each Party agrees that throughout the course of its relationship with the other Party and for a period of five (5) years after the most recent order placed by and delivered to Purchaser, such Party will not, without the expressed written consent of the other Party, directly or indirectly communicate or divulge to, or use for its own benefit or the benefit of any other person or entity, any of the other Party's Confidential Information which was communicated to or otherwise learned of or acquired by such Party during the course of its relationship with the other Party. Notwithstanding the foregoing, either Party may disclose or use Confidential Information under any of the following circumstances: (i) disclosure or use thereof in good faith and in connection with the performance of its duties in the course

of its relationship with the other Party to the extent required, (ii) disclosure or use of any such information or data which is generally known within the industry or is otherwise available through independent resources, and (iii) disclosure or use thereof pursuant to any regulatory, compliance, or legal requirement in which case the disclosing Party agrees to provide notice of such requirement prior to such disclosure or use in order to give the other Party, in its discretion, the ability to challenge any such disclosure or use with the applicable governmental authority or to otherwise obtain a protective order as to such disclosure or use. Each Party agrees to immediately notify the other Party of any disclosure of Confidential Information that is not permitted under these Terms and Conditions and of any other misuse of Confidential Information in violation of these Terms and Conditions. In addition, each Party agrees to indemnify and hold harmless the other Party and its respective officers, directors, employees, agents, successors and assigns, from and against any and all claims, actions, suits, demands, damages, liabilities, obligations, and other losses, including reasonable attorneys' fees and court costs arising therefrom or related thereto, claimed from or against such other Party and related to the unauthorized use or disclosure of the other Party's Confidential Information including but not limited to dissemination of Confidential Information that occurs due to a third-party data breach of such Party's computer, filing, or data retention systems.

### 13. **INDEMNIFICATION**

(a) H\*E agrees to defend, indemnify and hold Purchaser, its officers, directors and employees harmless from all liability or expense arising from, in whole or in part, violations by H\*E of any applicable laws, rules and regulations, or any breach of any term of the Agreement.

(b) Purchaser agrees to defend, indemnify and hold H\*E, its officers, directors and employees harmless from all liability or expense arising from, in whole or in part, violations by the Purchaser of any applicable laws, rules and regulations, or any breach of any term of the Agreement.

(c) Purchaser is solely liable for the acts and omissions of its employees, agents, contractors and subcontractors and Purchaser indemnifies and will defend and protect H\*E from all losses, claims, expenses and damages, including attorney's fees, arising from or out of the acts or omissions of Purchaser and its employees, agents, contractors, and subcontractors.

(d) In no event shall either party be liable for punitive, indirect, incidental, special or consequential damages suffered by the other party, including but not limited to loss of profits.

14. **INSURANCE.** H\*E shall be required to maintain insurance in connection with this Agreement and a copy of the insurance certificate for such insurance shall be provided to Purchaser upon demand for Purchaser's approval.

15. **FORCE MAJEURE.** H\*E shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance or non-performance due to acts of God; acts of Purchaser; war; weather; sabotage; civil disturbances or riots; the prior performance of any government order; any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law; local labor shortage; fire; flood or other casualty; acts of the government (including through regulation or other requirements) or public enemy; epidemics, pandemics, or public health emergencies as declared by the World Health Organization or the Department of Health and Human Services of the United States; quarantine restrictions; shortage or failure of raw material, supply, fuel, power or transportation; breakdown of equipment; strikes, labor disputes or

differences with workmen, regardless of whether or not H\*E is capable of settling any such labor problem; unforeseen circumstances or any events beyond H\*E's reasonable control whether of similar or dissimilar nature than those above enumerated (each a "Force Majeure Event"). If H\*E determines in its sole discretion that its ability to supply the total demand for the Product, or to obtain material used directly or indirectly in the manufacture of the Product, is hindered, limited or made impracticable due to any events beyond its control, including, but not limited to the Force Majeure Events set forth above, H\*E shall provide reasonable notice to Purchaser upon making such a determination and may allocate its available supply of the Product or such material (without obligation to acquire other supplies of any such Product or material) among itself and its purchasers on such basis as H\*E determines in its sole discretion to be equitable without liability for any failure of performance which may result therefrom.

16. **WAIVER.** Failure or inability of either party to enforce any right hereunder shall not waive any such right with respect to future performance under this Agreement.

17. **EXPORT.** Purchaser agrees that all applicable export control laws, regulations, orders and requirements, including without limitation those of the jurisdiction in which H\*E and Purchaser are established or from which Product may be supplied, will apply to their receipt and use. In no event shall Purchaser use, transfer, release, or export Product in violation of such applicable laws, regulations, orders or requirements. In connection with the transactions contemplated by the Agreement, Purchaser is familiar with and shall fully comply with all applicable laws, regulations, rules and other requirements of H\*E's jurisdiction and of any applicable state, foreign and local governmental body in connection with the purchase, receipt, use, transfer and disposal of Product. If Purchaser exports Product in violation of any applicable law, regulation or rule, Purchaser shall be solely responsible for any fines or penalties imposed by competent authorities and shall indemnify and hold H\*E harmless from any fines, penalties, and costs (including legal fees) incurred by H\*E in connection with Purchaser's violation.

18. **GENERAL PROVISIONS.** The Agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of the Agreement. All typographical or clerical errors made by H\*E in any quotation, acknowledgement or publication are subject to correction.

19. **APPLICABLE LAW; VENUE.** Interpretation of these Terms and Conditions and all transactions between the Parties shall be governed by and interpreted in accordance with the laws of the state of Missouri (without regard to conflict of laws provisions). The Parties hereby submit to the jurisdiction in the federal and state courts, in Jackson County, Missouri for the purposes of resolving any disputes arising under or otherwise regarding the Agreement. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to the Agreement.

20. **NOTICE.** All notices, claims, requests and other communications hereunder which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given and received on the date sent if hand-delivered, or sent by delivery service, telegram or facsimile transmission to the other party at the address set forth on the signature page to this Agreement. Notices, claims, requests, and other communications delivered by mail shall be deemed to have been received three (3) business days after deposit in the US mail postage prepaid.

21. **ASSIGNMENT.** Neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by either party without the prior written consent of the other party which consent shall not be unreasonably withheld provided, however, that a party may (i) assign this Agreement to any entity that acquires all or substantially all of such party's assets or its business that is the subject hereof, or (ii) upon written notice to the other party, assign this Agreement to any entity that is owned by such party.

22. **TOOLS AND MATERIALS.** H\*E shall retain title to any designs, sketches, drawings; blueprints, patterns, dies, models, molds, tools, special appliances and materials (“Articles”) furnished or paid for by H\*E in connection with any Purchase Order. Articles shall be marked as property of H\*E, shall be properly insured (with loss payable to H\*E) and shall be replaced if lost or destroyed.
23. **GOVERNMENT CONTRACTS.** If Products are being shipped by H\*E to fulfill the requirements of a governmental contract, Purchaser agrees to accept and accommodate any additional or different terms imposed upon H\*E by the government.
24. **COMPLIANCE WITH LAWS.** In connection with each Purchase Order, Purchaser shall comply with all applicable federal, state and local laws, executive orders, rules and regulations, including but not limited to the Occupational Safety and Health Act of 1970 as amended (“OSHA”), Toxic Substances Control Act as amended (“TOSCA”), Equal Employment Opportunity Act and the Regulations and Standards issued pursuant thereto, and the Fair Labor Standards Act of 1938 as amended (“FLSA”).
25. **HEADINGS.** The paragraph headings and numbers are for convenience only and shall not be deemed to affect in any way the language of the provisions to which they refer.
26. **INTERPRETATION.** Where the context of the Agreement so requires, the singular shall include the plural and vice versa.
27. **ORDER OR PRECEDENCE.** In the event of any conflict between this Agreement and any other terms and conditions of any other document, this Agreement shall govern. In the event of conflict between the terms and conditions found in the Purchase Order and these Terms and Conditions, the Purchase Order shall govern.