

UNARCO SALE TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT.** The terms and conditions set forth herein and on the face hereof, together with the Specifications (as hereinafter defined), if any (collectively "Agreement") (a) supersede and cancel all previous understandings and communications between Unarco Material Handling, Inc. ("Unarco") and the purchaser identified on the face hereof ("Buyer") with respect to the items described on the face hereof (the "Goods"); and (b) constitute the entire agreement between Unarco and Buyer with respect to the Goods. All representations, promises, warranties or statements by any agent or employee of Unarco that differ in any way from the terms and conditions hereof shall be given no effect or force. Any additional, contradictory or different terms contained in any previous or subsequent order or communication (including but not limited to purchase orders) that Unarco may receive pertaining to the Goods are hereby objected to and rejected. No waiver or modification of terms herein shall be binding upon Unarco unless the same is in writing and signed by Unarco. No distributor or sales representative of Unarco has any authority to alter, amend or extend any of these terms and conditions. **ACCEPTANCE OF ANY OFFER IS EXPRESSLY LIMITED TO THE PROVISIONS HEREIN.**
2. **DELIVERY; DELAY; NONPERFORMANCE.** Delivery dates are estimates only. No contract to deliver at a specified time shall be effective unless in writing, signed by Unarco. Unarco will not be liable for any damage, loss, liability or expense arising out of delays in manufacture, shipment or delivery or other nonperformance of this Agreement caused by or imposed by (a) strikes, fires, disasters, riots, acts of God or accidents at plants, (b) acts or omissions of Buyer, (c) shortages of or inability to procure labor, fuel, power, materials, supplies, transportation or manufacturing facilities, (d) subcontractor or supplier delay or differences with workmen, (e) actions, demands or requirements of the government of the United States, any state or any other government, or (f) any other cause or condition beyond Unarco's reasonable control. In the event of any delay or nonperformance due to reasons set forth in this Paragraph 2, Unarco may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.
3. **SPECIFICATIONS.** Unarco shall not be bound by the provisions of any contract or document relating to or affecting in any way (a) the design, specifications, manufacture or installation of the Goods or (b) any structure into which the Goods are to be incorporated, except for the provisions contained herein and on the face hereof and that specific portion of the design, specifications, plans, drawings or other descriptions, if any, that describes the scope of Unarco's performance and is acknowledged by Unarco in writing as describing the same (collectively, the "Specifications"). Unarco assumes no liability or responsibility for such provisions prepared by anyone other than Unarco, except those that are specifically agreed to in writing by Unarco. Unarco reserves the right to change or modify the design and construction of any product manufactured by Unarco and to substitute material equal to or superior to that originally specified.
4. **CLAIMS.** Any claim by Buyer with reference to the Goods sold hereunder shall be deemed waived by Buyer unless submitted in writing in accordance with this Paragraph 4. Buyer shall inspect the Goods immediately upon receipt and prior to any installation or use of such Goods. Unless Buyer provides written notice to Unarco of any claim for shortages or defects in the Goods within five (5) days after Buyer's receipt of shipment, such Goods shall be deemed finally inspected and accepted by Buyer. If a defect is of such nature that reasonable inspection within the time provided herein would not disclose it, then notice of the claimed defect shall be made in writing and delivered to Unarco within ten days after Buyer knew or should have known of the defect as set out in Paragraph 18 hereof; provided, however, that (notwithstanding any provisions hereof to the contrary) Unarco shall not be liable for claimed defects in Goods once Buyer has incorporated such Goods into a structure. At Unarco's request, Buyer will send any allegedly nonconforming Goods to Unarco.
5. **INDEMNIFICATION AND ASSUMPTION OF RISK AND LIABILITY FOR LOSS OR DAMAGE RESULTING FROM THE HANDLING, USE, STORAGE, DISPOSAL OR APPLICATION OF THE GOODS DELIVERED HEREUNDER, AND THE CONTAINERS IN WHICH SUCH GOODS ARE SHIPPED.** Buyer agrees to familiarize itself and keep informed with regard to any hazards to persons and/or property involved in handling, using and disposing of the Goods and the containers in which such Goods are shipped. Buyer shall advise all persons and firms that foreseeably may handle, use and dispose of such Goods and containers of any such hazards. **TO THE FULL EXTENT ALLOWED BY LAW, BUYER HEREBY ASSUMES AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS UNARCO AND ITS PARENT AND OTHER AFFILIATED ENTITIES, AND EACH OF THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, REPRESENTATIVES, ATTORNEYS, SURETIES AND INSURERS (COLLECTIVELY "UNARCO PARTIES") FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE AND EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR IN CONNECTION WITH CLAIMS BY BUYER'S EMPLOYEES, CUSTOMERS, INDEPENDENT CONTRACTORS AND ANY THIRD PARTIES BASED UPON OR RESULTING FROM THE HANDLING, USE, STORAGE, DISPOSAL OR APPLICATION OF THE GOODS DELIVERED HEREUNDER OR THE CONTAINERS IN WHICH SUCH GOODS ARE SHIPPED, WHETHER OR NOT SUCH GOODS OR CONTAINERS ARE USED IN COMBINATION WITH OTHER ARTICLES OR SUBSTANCES OR ARE USED IN ANY MANUFACTURING PROCESS, EXCEPT WHERE SUCH ARISES SOLELY OUT OF UNARCO'S NEGLIGENCE.**

Buyer acknowledges and agrees that improper use or maintenance of, or damage to, the Goods can adversely affect the performance or capacity of the Goods and that Unarco is not responsible or liable for any damages or claims arising therefrom. Buyer also acknowledges and agrees that improper installation can adversely affect the performance or capacity of

UNARCO SALE TERMS AND CONDITIONS

the Goods. Buyer acknowledges and agrees that Unarco is not responsible or liable for or in connection with any installation of the Goods not performed by Unarco. Information regarding proper use, maintenance, damage protection and installation with respect to the Goods can be obtained from Unarco upon request or at UNARCORACK.COM.

6. **MODIFICATION AND CANCELLATION.** Orders shall be considered final upon the mailing, faxing or delivery by overnight courier of Unarco's written acceptance and cannot be modified (except as set for in Paragraph 1 hereof) or canceled, nor can releases of goods hereunder be held up by Buyer after the order is in process, except (a) with Unarco's written consent, (b) indemnification of Unarco by Buyer against liability and expense incurred and commitments to third parties made by Unarco, and (c) payment by Buyer to Unarco for all work in process, the contract value of products or parts completed and ready for shipment and any damages sustained by Unarco. If Buyer so chooses, it shall have the right to purchase the material already fabricated at the time of cancellation.

7. **RETURNS.** Material received may not be returned by Buyer except by written agreement with Unarco. In all cases, permission must be secured from Unarco prior to the returning of any goods. Further, any return will be for credit only. All returned goods are subject to a minimum service charge of 25% of selling price, plus all transportation charges, and inspection by Unarco. Unarco reserves the sole right to determine the amount of credit to be issued on all goods returned for credit. Only standard, currently manufactured Unarco products will be considered for return and credit.

8. **PRICING AND PAYMENTS.** Written quotes by Unarco remain in effect for 30 days from the date of the quotation and are subject to these terms and conditions. All orders based on such quotes must be in writing and delivered to, and accepted by, Unarco within said 30-day period to be effective. The price quotes do NOT include manufacturer's gross receipts, excise, sales, use or similar tax, whether Federal, State, City or other, levied on the transaction. All prices are F.O.B. Unarco's plant, unless otherwise specifically set forth on the face hereof. Payment shall be made on the terms appearing on the face hereof. Buyer agrees to pay interest of 1-1/2% per month (or, if such rate exceeds the maximum rate allowed by applicable law, interest calculated at such maximum rate) on any outstanding balances not paid when due, from the date such balances are due until payment is made in full.

9. **SECURITY INTEREST; LIENS.** Until the purchase price due pursuant hereto is paid in full, Unarco is granted and retains a purchase money security interest in the Goods, and in all proceeds of such Goods. Buyer shall execute financing statement(s) on request, and irrevocably grants Unarco power of attorney to execute and file same on Buyer's behalf, with respect to such security interest. Unarco shall not be required to waive or terminate any security interest or lien in advance of payment. Buyer agrees to assist Unarco in maintaining, protecting and

perfecting any such security interest or lien by taking such steps as Unarco may reasonably require in connection therewith.

10. **TAXES.** Any taxes that Unarco may be required through assessment or otherwise to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any of the Goods or services covered hereby, including taxes upon or measured by receipts from sales or services, shall be paid by Buyer to Unarco upon demand. In lieu of such payment, Buyer may issue tax exemption certificates acceptable to the appropriate taxing authorities and Unarco.

11. **UNARCO'S REMEDIES.** If Buyer fails to make payments when due or breaches any obligation in this Agreement, Unarco may suspend performance hereunder until receipt of assurance satisfactory to Unarco. If Unarco shall have reasonable grounds for insecurity with respect to Buyer's performance of this Agreement, and if adequate and satisfactory assurance of performance is not provided within thirty days of Unarco's demand for such assurance, Buyer will be deemed to have repudiated this Agreement and will be liable for damages thereby caused. Unless otherwise provided herein, Unarco's obligation to perform hereunder shall cease at Unarco's election if Unarco is not permitted to complete performance within twelve (12) months from the date hereof. Unarco may recover from Buyer all expenses and damages resulting from Buyer's breach or Seller's enforcement of this Agreement or related obligations, including attorneys' fees and expenses. All remedies of Unarco provided for in this Agreement shall be cumulative and in addition to any others provided by applicable law or agreement.

12. **ERECTION WORK.** If Unarco is required to provide for erection or installation ("erection") of some or all of the Goods, Buyer shall have all things in readiness, including but not limited to equipment, connections and facilities, for erection at the time the Goods are delivered. Any movement of the Goods from Buyer's warehouse or other location to the erection site shall be at Buyer's added expense, unless otherwise agreed in writing. Unarco shall have free use of Buyer's hoisting equipment and operator. Buyer shall reimburse Unarco for any and all expenses arising out of (i) Buyer's failure to have all things in readiness for erection on the scheduled erection date and (ii) any and all other unusual and/or unexpected conditions that may develop or be encountered in the erection process. Buyer shall be responsible for any damage to Unarco's work caused by anyone other than Unarco or Unarco's subcontractor. Proposed changes in the scope of any erection work to be performed hereunder shall be subject to an adjustment in price to be agreed upon by Buyer and Unarco in writing prior to any obligation of Unarco to accept and make such changes.

13. **SHIPPING AND PACKAGING.** In the absence of shipping and packing instructions by Buyer, Unarco shall use its own discretion in the choice of carrier and method of packaging. Prices stated are based on Unarco's standard packaging. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer. Notwithstanding any other provision of this Agreement, when the

UNARCO SALE TERMS AND CONDITIONS

stated price includes transportation charges, the price shall be adjusted to reflect any increase or decrease in such charges at the time of shipment. Unarco shall not be responsible for insuring shipments, unless specifically requested by Buyer, and any insurance so requested shall be at Buyer's expense and valuation. Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Unarco to the carrier (unless a different F.O.B. point is stated on the face hereof), and any claims for losses or damage shall be made by Buyer directly with such carrier. Expenses incurred by Unarco in connection with detention of carrier's equipment at destination shall be borne by Buyer.

14. **INSPECTION AND TESTING.** Unarco shall not be liable for inspecting and testing charges unless expressly stated on the face hereof. If an outside source inspection is required prior to shipment of an order, a \$25.00 per hour service fee (with a two hour minimum) shall be paid by Buyer to Unarco with respect to such inspection. Any welding inspection required by Buyer or Buyer's specifications must be done at Unarco's plant prior to packing and shipping of the Goods. **IN NO EVENT SHALL ANY INSPECTING OR TESTING PERFORMED BY UNARCO BE DEEMED TO CONSTITUTE AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY OF MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, ALL OF WHICH ARE HEREBY DISCLAIMED AS MORE FULLY SET FORTH IN PARAGRAPH 18 HEREOF.**

15. **PATENT INFRINGEMENT.** Except in the case of articles, materials and designs furnished or specified by Buyer, Unarco, at its own expense, shall defend any third-party suit brought against Buyer on the ground that Buyer's possession and use of the Goods furnished hereunder by Unarco infringes any valid, registered United States patent existing on date of this Agreement, and shall pay the amount of any judgment that may be awarded against Buyer in any such suit; provided and upon condition that Buyer shall have made all payments due and performed all its obligations under this Agreement and shall promptly (i) notify Unarco in writing within ten (10) days of the commencement of such suit or proceeding; (ii) deliver to Unarco all infringement notices and other papers received by or served upon Buyer (iii) permit and give authority to Unarco to take complete charge of the defense of such suit and to compromise or settle the same, and (iv) assist in every reasonable way in the conduct of such defense. Buyer shall not settle or compromise any such suit or proceeding without the prior written consent of Unarco. In the event that Buyer shall be enjoined by a court of competent jurisdiction, from which no appeal can be taken, from using Goods provided hereunder for their intended purpose on the ground that such use infringes any such United States patent, or if it is established to Unarco's satisfaction, upon due investigation, that use of such parts infringes any such United States patent, Unarco, at its option, may either (w) procure for Buyer a license to continue using such Goods, (x) modify the Goods so as to make them noninfringing without seriously impairing their performance, (y) replace the Goods with materials that are substantially the equivalent but noninfringing, or (z) remove the Goods from

Buyer's plant, in which event Unarco shall refund to Buyer the purchase price, less depreciation at the rate of 20% per year. The foregoing sets forth Unarco's entire liability and sole obligation to Buyer for infringement of any intellectual property or proprietary rights. Unarco shall have no obligation or liability whatsoever arising out of any patent infringement claims directed to a process or a method.

TO THE FULL EXTENT ALLOWED BY LAW, BUYER AGREES TO INDEMNIFY AND HOLD HARMLESS UNARCO PARTIES AGAINST ANY CLAIMS OR LIABILITIES, AND ALL ATTORNEYS' FEES INCURRED, FOR, OR BY REASON OF, THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS ARISING FROM THE MANUFACTURE HEREUNDER OF ANY PARTS IN ACCORDANCE WITH SPECIFICATIONS FURNISHED BY BUYER OR FROM THE SALE THEREOF.

16. **APPROVAL OF DRAWINGS.** If Unarco prepares drawings with respect to the Goods, approval thereof by the Buyer, its representative, or the representative of the owner of or general contractor on the project for which such Goods are required shall constitute a final approval by Buyer of those and all other documents describing such Goods, including the Specifications, if any, and shall constitute authority for Unarco to furnish Goods in accordance with such drawings (as approved in accordance with this Paragraph 16, the "Drawings").

17. **DESIGN/CAPACITY OF GOODS.** Buyer agrees that any design safety factor provided in connection with or incorporated into the Goods is so provided or incorporated in order to accommodate such things as variations in the properties of materials, manufacturing and operating conditions, and design assumptions, and does not constitute authorization for, and may not protect against, forces or loads that exceed the design limits of the Goods.

Buyer also acknowledges and agrees that any information provided by Unarco with respect to the capacity of the Goods is based upon certain estimations and assumed conditions and may not reflect the actual capacity of the Goods in every instance or under every condition. Unarco assumes no responsibility or liability with respect to such information. In addition, calculation of capacities may change from time to time and Unarco assumes no responsibility for notifying Buyer or any third party of any such changes. Further information concerning capacities or any changes therein may be obtained upon request from Unarco.

Buyer acknowledges and agrees that it has the responsibility to advise Unarco with respect to any applicable laws, codes or governmental requirements, including seismic requirements, relating to the intended use of the Goods, and Unarco assumes no responsibility for otherwise determining or complying with such laws, codes or requirements.

18. **WARRANTY; LIMITATION OF REMEDIES AND DAMAGES.** Unarco warrants to Buyer that the Goods manufactured by Unarco shall be free of defective material or faulty workmanship for a period of one (1) year from the date of

UNARCO SALE TERMS AND CONDITIONS

shipment of such Goods by Unarco (“Warranty Period”) and shall conform substantially to the Specifications, if any, as interpreted by the Drawings, if any, so long as such Goods have been properly installed (if not installed by Unarco), serviced and used under conditions that are normal and prudent in Buyer’s industry and in accordance with Unarco’s instructions. The liability of Unarco shall not extend to dismantling, installing or reinstalling, but shall be limited to repairing or replacing, at Unarco’s option, such nonconforming items or parts of such items without charge, within a reasonable time after receipt of written notice from Buyer of any such nonconforming Goods, provided that (i) such notice is given as provided in Paragraph 4 hereof and (ii) such notice is received by Unarco within the Warranty Period. BUYER AND UNARCO EXPRESSLY AGREE THAT BUYER’S SOLE AND EXCLUSIVE REMEDY AGAINST UNARCO WITH RESPECT TO THE GOODS SHALL BE FOR THE REPAIR OR REPLACEMENT (AT UNARCO’S OPTION) OF NONCONFORMING GOODS AS PROVIDED HEREIN. Allegedly defective Goods must not be returned except after receipt of authorization pursuant to Unarco’s “Return Material Form.” Unarco makes no warranty with respect to Goods or components thereof manufactured by others, except that, to the extent of its ability to do so, Unarco will pass along to Buyer the benefit of any warranty given to Unarco by such manufacturers. Further, Unarco does not warrant any components or systems manufactured by Unarco that are used in conjunction with components or parts not manufactured by Unarco. Buyer agrees that Unarco is not responsible for any conditions over which Unarco has no control. Unarco’s warranty does not apply to any Goods that have been subjected to misuse, mishandling, misapplication, neglect, improper maintenance, accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), adjustment or repair by anyone other than Unarco or one of Unarco’s authorized agents. This warranty is for Buyer’s exclusive benefit and is not assignable or transferable, nor is Buyer permitted to represent to its customer, or any third party, that such customer or third party may rely on this warranty, without the prior written consent of Unarco. UNARCO SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT.

EXCEPT AS EXPRESSLY PROVIDED ABOVE IN THIS PARAGRAPH 18, IN NO EVENT SHALL UNARCO BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR EXPECTATION DAMAGES ARISING OUT OF, IN CONNECTION WITH OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO BREACH OF ANY OBLIGATION IMPOSED ON UNARCO HEREUNDER OR IN CONNECTION HEREWITH) OR THE USE, STORAGE, DISPOSAL OR HANDLING OF THE GOODS. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LIQUIDATED DAMAGES, LOSS OF USE, INCOME OR PROFIT, SHUTDOWN, SLOWDOWN OR STOPPAGE OF ANY

PRODUCTION LINE OR FACILITY, DAMAGES OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING WITHOUT LIMITATION PROPERTY STORED ON, OR HANDLED OR PROCESSED BY THE USE OF, THE GOODS). TO THE FULL EXTENT ALLOWED BY LAW, BUYER SHALL INDEMNIFY UNARCO PARTIES AGAINST ALL LIABILITY, COST OR EXPENSE THAT MAY BE SUSTAINED, INCLUDING ATTORNEYS’ FEES, ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

19. LIMITATION OF LIABILITY. UNARCO’S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) WITH RESPECT TO THE GOODS SHALL LIMITED TO THAT SET FORTH IN PARAGRAPH 18 HEREIN.
20. DISPUTE RESOLUTION. Unarco and Buyer agree that any dispute that may arise between them with regard to or related to this Agreement, including any amendments or modifications hereto, shall be resolved, at Unarco’s option, either (a) by arbitration in the State of Tennessee in accordance with the Commercial Arbitration Rules of the American Arbitration Association (any hearing to be in Springfield, Tennessee or Nashville, Tennessee), and a judgment on the award may be entered by any court of competent jurisdiction, or (b) in a state court in Robertson County, Tennessee or federal court in the Middle District of Tennessee. Buyer hereby irrevocably waives any objections on the grounds of improper jurisdiction or venue to an action or proceeding in such location or venue.
21. NOTICES. All notices and demands required hereunder shall be in writing and mailed by certified mail, or sent by facsimile or overnight courier, to Unarco or Buyer at their respective addresses that are shown on the face hereof, or at any other address designated by notice, from the entity to receive notices, sent in accordance herewith.
22. CONTROLLING LAW. Buyer acknowledges that Unarco’s headquarters are in Springfield, Tennessee. The parties agree that the transactions contemplated herein have a substantial relationship with and impact on the State of Tennessee, and that this Agreement shall be construed and enforced according to the internal laws of the State of Tennessee.
23. SEVERABILITY. If for any reason any provision of this Agreement shall be declared invalid or unenforceable by any arbitrator or court having proper jurisdiction, that part will be enforced to the maximum extent permitted by law, and the remainder of this Agreement shall remain fully in force.
24. ASSIGNMENT. This Agreement may not be assigned by Buyer without the prior written consent of Unarco.