



TNT Manufacturing LLC

Food Process Equipment Sales, Engineering & Service

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TNT MANUFACTURING LLC TERMS AND CONDITIONS OF SALE

1. OFFER, GOVERNING PROVISIONS AND CANCELLATION.

This writing constitutes an offer or counter-offer by TNT Manufacturing LLC (“Seller”) to sell the products and/or services described herein in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Buyer, and acceptance of this offer is expressly conditioned upon Buyer’s assent to these terms and conditions. Buyer will be deemed to have assented to these terms and conditions when:

- (a) Buyer signs and delivers to Seller and acknowledgement copy of any of the Seller’s sales order, quotations, order acknowledgement or invoice forms;
- (b) at Seller’s option, Buyer shall have given to seller (orally or in writing) specifications of quality and/or type of goods, assortments thereof, delivery dates, shipping instructions, instructions to bill, or the like as to all or any part of the merchandise herein described;
- (c) Buyer had received delivery of the whole or any part thereof; or
- (d) Buyer has otherwise assented to the terms and conditions hereof.

No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing by an officer of Seller at Columbus, Wisconsin; no other representative has any authority to waive, alter, vary or add to the terms hereof. Seller hereby objects to any such additional or different provisions contained in any purchase order or other communication from Buyer. THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER, AND SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF WISCONSIN. The rights and obligations of the parties hereunder shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. No order may be cancelled or altered by the Buyer except upon terms and conditions acceptable to Seller, as evidenced by Seller’s written consent. In the event of such an approved cancellation by Buyer, Seller shall be entitled to payment of the full price, less that amount of any expenses saved by Seller by reason of the cancellation.

2. PRICES.

As explained on the face of this form, the prices for the goods and/or services there set forth are Seller’s prices for such goods and/or services with all of the terms in this form, including the exclusive Warranty and the various disclaimers and limitations of liability enforceable against

the Buyer. If Buyer desires for Seller to provide a greater, or additional warranty and/or to be liable for some or all of the disclaimed or limited liability, the prices set forth on this offer are not available, and the Buyer must notify Seller before Buyer accepts this offer (or is deemed to accept it) pursuant to paragraph 1 above. Seller will then make a new offer containing prices reflecting that additional exposure. In the absence of such a new offer, all of the terms in this form shall be enforceable. By accepting this offer, Buyer understands that it is foregoing the possibility of, among other things, recovery of consequential damages from Seller and of indemnity for tort liability in exchange for Buyer obtaining a lower sales price for the goods and/or services.

All prices listed are payable in United States Dollars. All prices are subject to change without notice; and the price of products on order but unshipped will be adjusted to the price in effect at the time of shipment. Payment is due within thirty (30) days from Buyer's receipt of Seller's invoice (Net 30), unless Seller requires payment in advance, or unless the invoice states different terms. Notwithstanding the above, at its option at any time, Seller may require Buyer to make payment by irrevocable letter of credit, and may defer shipment or cancel any order if the Buyer does not promptly provide such a letter of credit. In that event, the letter of credit shall be issued for Seller's benefit by a prime U.S. bank, shall be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 290, 1974 Revision), shall provide for payment against Seller's invoice and bill of lading, and shall be in form and substance satisfactory to Seller. Interest will be charged at the rate of 18% per year (or such lesser sum as is the highest rate permitted by applicable law) on accounts more than thirty (30) days past due.

3. SECURITY INTEREST.

Title to the equipment sold hereunder, and all additions or accessions to and substitutions for such equipment, shall remain in the Seller as a security interest, and Buyer hereby grants to Seller's security interest in the goods sold hereunder, until the Buyer has completed payment of the purchase price, plus accrued interest, and fully performed all of the other terms and conditions hereof, at which time the Seller's security interest is satisfied.

The equipment covered hereby shall remain strictly personal property, irrespective of the mode of its attachment to realty, the consequences of its being disturbed or removed, or the use made of it. The Buyer shall maintain the equipment covered hereby in good condition and repair and not permit its value to be impaired. The Buyer shall, not sell, mortgage, pledge or otherwise deal in or encumber the equipment or any part of it or permit it to be removed from the place where first installed (so long as any portion of the purchase price or accrued interest or any other sum due Seller under these terms of sale remains unpaid), without the Seller's prior written consent. The Seller is authorized to inspect the equipment wherever located at any reasonable time or times. The equipment shall be insured by the Buyer at its own expense in an amount not less

than the balance due to the Seller under this agreement, with loss, if any, payable to the Seller. Seller has no duty to protect, insure or realize upon the equipment.

4. TAXES AND OTHER CHARGES.

Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value-added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, the Buyer shall reimburse Seller therefore; or in lieu of such payment, the Buyer shall provide Seller at the time the order is submitted with an exception certificate or other document acceptable to the authority imposing the same. Should any tax assessment become delinquent, Buyer shall promptly notify Seller, and any payment made by Seller to discharge such assessment shall become part of the unpaid purchase price and be secured hereunder.

5. DELIVERY, CLAIMS AND FORCE MAJEURE.

These commodities, technologies and/or software are being exported from the United States in accordance with Export Administration Regulations. Diversion contrary to U.S. law is prohibited.

All products are sold F.O.B. Seller's plant in Columbus, Wisconsin, U.S.A. – unless otherwise stated on the quotation or invoice. Delivery of products to a carrier at Seller's plant or other loading point shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by Buyer. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately, invoiced and paid for when due per invoice, without regard to subsequent deliveries and any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Method and route of shipment shall be at the discretion of Seller unless Buyer shall specify otherwise; any additional expense of the method of route of shipment specified by Buyer shall be borne entirely by Buyer. Buyer shall bear all costs of bags, barrels, boxes, pallets or other containers used to ship products sold hereunder. No shipping containers may be returned to Seller unless such return is accepted in advance by Seller in writing and unless all return freight is prepaid by Buyer.

Claims for shortages or other errors in delivery must be made in writing to Seller within ten (10) days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance of all shipments made prior to Seller's receipt of Buyer's notice of claim, and shall constitute a waiver of all such claims by Buyer. Claims for loss or damage to goods in transit should be made to the carrier and not to Seller.

All delivery dates are approximate; without limiting the foregoing, shipments made within thirty (30) days after specified date of delivery shall constitute timely delivery. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of the Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown or other labor difficulties, war, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials or manufacturing facilities or, without limiting the foregoing, any other delays beyond the Seller's control. In the event of any such delay the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason shall be rescission of this agreement.

6. STORAGE.

If the products are not shipped within fifteen (15) days after notification to the Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including the Buyer's failure to give shipping instructions, Seller may store such products at the Buyer's risk in a warehouse or yard or upon Seller's premises, and the Buyer shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefore.

7. CHANGES.

Seller may at any time make such changes in design and construction of products, as Seller deems appropriate, without notice to Buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

8. WARRANTIES.

A. New Products: Seller warrants new products manufactured by it and supplied hereunder to be free from defects in materials and workmanship for a period of twelve (12) months from date of shipment. If within such period any such product shall be proved to Seller's satisfaction to be defective, such product shall be repaired or replaced at Seller's option. Such repair or replacement shall be Seller's sole obligation and Buyer's exclusive remedy hereunder and shall be conditioned upon Seller's receiving written notice of any alleged defect within ten (10) days after its discovery and, at Seller's option, return of such products to Seller, F.O.B. its factory. This warranty is only applicable to products properly maintained and used according to Seller's instructions. This warranty does not apply to products damaged by misuse, neglect, improper operation, accident or alteration, as determined by Seller. Products supplied by Seller hereunder, which are manufactured by someone else, are not warranted by Seller in any way, but Seller agrees to assign to Buyer any warranty rights in such products that Seller may have from the original manufacturer.

B. Used Products: Used products are sold “AS IS” and WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OR MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

C. All Products: THE WARRANTY CONTAINED IN THIS SECTION 9 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES. EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED OR MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PUR PURPOSE. If Buyer desires for Seller to provide a warranty greater than which is stated above, then Seller will adjust upward the prices for the goods and/or service listed on the face of the quotation to reflect the additional expense to Seller which a warranty obligation would cause. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to replace defective products, or refund the purchase price, within ninety (90) days of the date which Seller determines a defect to exist. Any description of the products, whether in writing or made orally by Seller or Seller’s agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer’s order are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by Seller or Seller’s agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

D. Compliance with Laws: Seller strives to comply with the provisions of all federal, state and local laws, standards and regulations for which liability may accrue to Buyer for violation thereof. Seller certifies that these goods produced in compliance with all applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and all regulations and orders of the United States Department of Labor issued under section 14 thereof. However, Seller does not warrant that any equipment and features meet the requirements of any local, state or federal laws or regulations, including those issued under OSHA. The equipment described herein is provided only with the safety devices and features shown in the applicable specifications. Should the customer require any additional devices or features, they should be specifically identified, and Seller will amend the quotation accordingly.

9. RETURNS.

Products may be returned to Seller only when Seller’s written permission, signed by duly authorized personnel of Seller, shall be obtained by Buyer in advance. Goods may not be returned unless they are in marketable condition. Returned products must be securely packaged and reach Seller without damage. A minimum re-stocking charge of 15% will be made, depending on the items involved and their condition when received. Any cost incurred by Seller to put products in marketable condition will be charged to Buyer.

10. PATENTS, TRADEMARKS AND COPYRIGHTS.

Seller will, at its own expense, defend any suits that may be instituted by anyone against Buyer for alleged infringement of any United States patent, trademark, or copyright relating to any products manufactured and furnished by Seller hereunder, if such alleged infringement consists of the use of such products, or parts thereof, in Buyer's business and provided Buyer shall have made all payments then due hereunder and shall give Seller immediate notice in writing of any such suit and transmit to Seller immediately upon receipt all processes and papers served upon Buyer and permit Seller through its counsel, either in the name of buyer or in the name of Seller, to defend the same and give all needed information, assistance and authority to enable Seller to do so. If such products are in such suit held in and of themselves to infringe any valid United States patent, trademark or copyright, then: (a) Seller will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such products by Buyer is permanently enjoined by reason of such infringement, Seller shall, at its own expense and at its sole option, either (i) procure for Buyer the right to continue using the products, (ii) modify the products to render them non-infringing, (iii) replace the products with non-infringing goods, or (iv) refund the purchase price less depreciation at the rate of 15% per year.

Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the products in combination with other goods or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement, and in no event shall Seller be liable for consequential damages attributable to an infringement.

As to any products furnished by Seller to Buyer manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer or any claim of contributory infringement resulting from the use or resale by Buyer of products sold hereunder, Seller shall not be liable, and Buyer shall indemnify Seller and hold Seller harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to Seller's reasonable attorneys fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary rights of third parties.

The purchase of any products hereunder does not entitle the Buyer to employ the same in any patented process.

11. EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY: BUYER'S INDEMNITY.

Seller's liability with respect to breaches of warranty shall be limited as provided in Section 8 hereof. With respect to other breaches of this contract, Seller's liability shall in no event exceed the contract price. SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT

OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slow-down costs, spoilage of material, or for any other types of economic loss. All the limitations and disclaimers contained in this paragraph and in the rest of this contract shall apply to claims of Buyer's customers or any third party asserted by Buyer against Seller for indemnity or contribution, as well as direct claims of Buyer against Seller.

Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys fees and other costs of defending any action) which Seller may incur as a result of any claim by Buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

12. TECHNICAL INFORMATION.

Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless the Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production process or techniques revealed thereby, shall be made without the express written consent of the Seller.

13. BUYER'S PROPERTY.

Any property of the Buyer placed in Seller's custody for performance of this contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of the Seller.

14. ADDITIONAL DOCUMENTS.

At the request of Seller, Buyer will join with Seller in executing one or more Financing Statements, pursuant to the Uniform Commercial Code in form satisfactory to Seller and will pay the cost of filing the same in public offices whenever filing is deemed by Seller to be necessary or desirable. At the Seller's option, at any time any unpaid balance hereunder shall be evidenced by a note or notes, to be executed and delivered by Buyer, bearing interest after the due date described in section 2 hereof at the default rate described in such section 2; but neither the

acceptance nor negotiation of notes by the Seller shall constitute payment hereunder or divest the Seller of its retained title to the equipment until the full face amount of all such notes, plus accrued interest, shall have been paid to the Seller in cash.

15. SAFETY DEVICES AND GUARDS.

Buyer shall use and require its employees to use all safety devices and guards required by applicable law and regulation and follow all safe operating procedures, including, but not limited to, those safety devices and guards provided by Seller and those installation, operation and maintenance procedures set forth in any manuals and instruction sheets furnished by Seller. In addition to any other indemnity provided herein, Buyer shall indemnify and hold Seller harmless from any liability, claims, judgments, costs and expenses (including attorneys fees) for personal injury (including death) and property damage, arising out of the operation of the equipment or the Buyer's failure to discharge its obligation as set forth herein. Buyer shall notify Seller promptly, and in any event within ten (10) days, of any accident or malfunction involving Seller's products which results in personal injury or property damage and shall cooperate fully with Seller in all investigations to determine the cause of such accident or malfunction.

16. SELLER'S REMEDIES.

In the event that the Buyer fails to make any payments when due under these terms of sale, or otherwise defaults in the performance of these terms, or if a receiver or trustee of the Buyer's property or business is appointed by any court, or if a proceeding in bankruptcy or insolvency is instituted by or against the Buyer (and, if against the Buyer, is not dismissed within sixty (60) days), or if the Buyer makes an assignment for the benefit of creditors, or if for any other reason the Seller deems itself to be insecure under this agreement, the unpaid balance of all sums which the Buyer is obligated to pay to the Seller under these terms shall become immediately due and payable, without any notice or demand, at the Seller's option.

In such event and at any time thereafter Seller shall have the remedies of a secured party under the Uniform Commercial Code. In addition, the Seller may, without incurring any liability to the Buyer for doing so, take immediate possession of the equipment (including all additions or accessions to and substitutions for the equipment), without notice, demand or legal process. For the purpose of taking possession of the equipment, the Seller may enter peaceably upon any premises where the equipment may be. The Seller may also require Buyer to assemble the goods and make them available to Seller at a place to be designated by Seller, which is reasonably convenient to both parties. Unless goods are perishable or threaten to decline speedily in value or are of a type customarily sold on a recognized market, Seller will give Buyer reasonable notice at the time and place of any public sale or of the time after which any private sale or other intended disposition is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, addressed to Buyer at the address shown at the beginning of this agreement at least five (5) days before the time of such sale or disposition. Expenses of

retaking, holding, preparing for sale, selling or the like shall include Seller's reasonable attorney's fees and legal expenses and Buyer shall be liable for such expenses as well as all the costs of collection.

No waiver by Seller of any default shall operate as a waiver of any other default or of the same default on a future occasion.

The rights and remedies of Seller hereunder are not exclusive but are in addition to any other rights and remedies which shall be available to the Seller under applicable law.

17. MANUALS, BROCHURES, INSTRUCTIONS.

Any and all operating manuals, instructions, brochures, warnings or the like concerning the goods supplied hereunder shall be written in the English language as commonly used in the State of Wisconsin, U.S.A., and are supplied as an aid to Buyer and are not represented to be accurate, complete or sufficient. Buyer warrants that it will accurately transcribe such manuals, instructions, brochures or warnings to appropriate languages and dialects so that its employees and all third party users of the goods will be properly informed of all the contents thereof. Buyer will indemnify and hold harmless Seller against all liabilities and expenses (including attorney fees) arising out of the use of the goods by the Buyer or a third party in any case where the Buyer fails to make available adequate warnings concerning the proper and normal use of the goods.