Orenco Systems®, Inc. Terms and Conditions

1. Agreement; Acceptance

This document contains all of the terms and conditions with respect to the sale and purchase of the merchandise furnished by Purchaser and sold by Orenco Systems®, Inc. (“Orenco”), unless a separate written agreement executed by duly authorized representatives of Purchaser and Orenco explicitly supersede these Terms and Conditions.

Acceptance of this offer by Purchaser is expressly limited to the exact terms contained herein, and any attempt by Purchaser to alter or omit any such terms shall be deemed a rejection and a counteroffer. Purchaser’s acknowledgment, acceptance, or purchase order form that stipulates different conditions shall not effect a modification of these Terms and Conditions. Unless Purchaser notifies Orenco in writing to the contrary prior to its receipt of the merchandise, or a separate agreement explicitly supersedes these Terms and Conditions, Purchaser’s acceptance of the merchandise shall conclusively evidence Purchaser’s acceptance of these Terms and Conditions.

2. Custom Products

Merchandise not listed in Orenco’s catalogs or standard price lists, or that must be custom built to the specifications of Purchaser, shall be considered “Custom Products” within this document. Custom Products do not include standard merchandise that requires minor modifications, such as being cut to a specified length. If Purchaser orders a Custom Product, and Orenco is agreeable to manufacturing and/or selling it, Purchaser will be responsible for all associated costs and expenses incurred by Orenco, and shall indemnify and hold Orenco harmless from and against any United States or foreign patent infringement suit related to the Custom Product brought upon Orenco by third parties. In addition, Purchaser assumes all responsibility for (a) ensuring that it provides Orenco for use in the Custom Product meet the designer’s functional requirements and/or specifications, (b) the compatibility of the Custom Product with existing systems, (c) the designer’s review and approval of the Custom Product to the designer for review, to ensure that it will be manufactured to meet the designer’s functional requirements and/or specifications. Orenco will only manufacture the Custom Product once it has received confirmation that the designer has reviewed and approved any such submittal documents.

3. Delivery

Orenco agrees to deliver all merchandise ordered by Purchaser for shipping within 30 days of the date Orenco receives and accepts a written purchase order, unless Orenco notifies Purchaser prior to the expiration of the 30-day period of any reasonable delay in availability of the merchandise or the carrier’s extended delivery time.

Merchandise shall be delivered when it is staged for shipping from Orenco’s facilities (FOB Origin [Shippping]), and Purchaser shall assume the risk of loss for the merchandise at that time. In the event Purchaser requests expedited delivery of merchandise, and Orenco is agreeable to the request, Purchaser shall be charged an Expedite Fee equal to the greater of $50.00 or 10% of the merchandise price.

4. Shipping

Purchaser is responsible for shipping its merchandise from Orenco’s facilities. Purchaser may transport the merchandise itself, arrange for transportation of the merchandise with carriers of its choosing, or have Orenco arrange transportation of the merchandise on its behalf. If Purchaser fails to clearly identify which party it chooses to make the arrangements, on a purchase order, Orenco will arrange the transportation of the merchandise associated with the order on Purchaser’s behalf.

Purchaser shall be responsible for all costs associated with transporting the merchandise from Orenco’s facilities, including all freight and insurance costs, as follows:

(a) Will-Cali; Collect. If Purchaser transports the merchandise itself or arranges transportation of the merchandise with a third-party carrier, Purchaser shall pay Orenco a commercially-reasonable fee for each pallet, crate, container, or other packaging provided by Orenco.

In addition, if Purchaser arranges transportation with a third-party carrier, Purchaser will arrange to pay for the service directly.

(b) Prepaid and Add. If Purchaser elects to have Orenco arrange transportation of the merchandise on its behalf, Orenco will pay for the service directly. Purchaser shall pay Orenco for both Shipping and Handling, as itemized on a quotation or invoice, as follows: (i) “Shipping” shall consist of reimbursement of all freight and insurance costs paid by Orenco, including all accessoriable charges from the carrier for items such as residential or construction site deliveries or use of lift gates, as well as any other fees, duties, tariffs, or taxes that may be applied to the merchandise by third parties after they are delivered. (ii) “Handling” charges shall include, but are not limited to, import, export, and transportation fees, duties, tariffs, and taxes. (iii) “Handling” shall consist of a fee equal to 5% of the Shipping costs paid by Orenco as identified above, and a commercially-reasonable fee for each pallet, crate, container, or other packaging provided by Orenco.

Large or special merchandise may require cranes or special equipment for unloading after transport. In instances where Orenco arranges for the transportation of this type of merchandise, Purchaser will be notified of any delay in the scheduled delivery of the merchandise for shipping, or if any information it receives from a carrier indicating a delay in the scheduled arrival of the merchandise includes the equipment necessary to unload the merchandise is present at the carrier’s destination, and shall reimburse and indemnify Orenco against any back charges or other fees charged by the carrier or failing to deliver the necessary equipment present at the agreed-upon destination and delivery time.

5. Taxes

Purchaser shall be responsible for the payment of all federal, state, provincial, county, local, or government taxes, including but not limited to, sales tax, use tax, value-added tax, goods and services tax, or any other tax that may be applicable to the merchandise ("Taxes"). Purchaser shall indemnify and hold Orenco harmless from and against any state or federal tax related to the Custom Product brought upon Purchaser is expressly liable for all Taxes. Orenco agrees to pay Orenco for use in the Custom Product meet the designer’s functional requirements and/or specifications.

Prior to releasing an order for a Custom Product for manufacturing, Orenco will notify Purchaser of any delay in the scheduled delivery of the merchandise for shipping, or if any information it receives from a carrier indicating a delay in the scheduled arrival of the merchandise includes the equipment necessary to unload the merchandise is present at the carrier’s destination, and shall reimburse and indemnify Orenco against any back charges or other fees charged by the carrier or failing to deliver the necessary equipment present at the agreed-upon destination and delivery time.

6. Payment Terms

Purchaser shall promptly pay Orenco for merchandise, and any Taxes, Shipping, Handling, or other costs associated with the merchandise, in accordance with the terms below:

(a) Prepayment. Purchaser may pay Orenco prior to delivery of merchandise, Taxes, estimated Shipping and Handling, and other associated costs, before Orenco will accept a purchase order and release it for manufacturing. (b) On Account. If Orenco has a credit account with Purchaser, Orenco shall credit Purchaser’s account for all reasonable transportation charges required to return the merchandise to the transport, and Purchaser agrees to ensure that the equipment being returned is in good working order.

7. Limited Warranty

Subject to the exclusions, limitations, and conditions contained herein, Orenco warrants that all merchandise will be free from defects in materials and workmanship for a period of 1 year after delivery of such merchandise to Purchaser, except as otherwise provided in a separate written warranty instrument between Orenco and Purchaser or from another manufacturer. If a separate written warranty instrument exists, the terms and conditions of said instrument shall govern.

8. Return of Merchandise

Purchaser may return merchandise without the prior approval of Orenco, except as otherwise provided in a separate written warranty instrument, if the merchandise is not defective in materials and workmanship, or proceeding is not subject to a restocking fee and all transportation charges required to return the merchandise to the original purchase. In the event Orenco determines that returned merchandise is not defective in materials or workmanship, or is not covered by this Limited Warranty, Orenco shall charge Purchaser a testing fee and all reasonable transportation charges required to return the merchandise to the Purchaser.

Orenco shall not be liable for any loss, injury, or damages to persons or property resulting from failure of, or any defect in, the merchandise. Nor shall Orenco be liable for any incidental, consequential, special, or indirect damages of any kind. In no event shall the liability of Orenco under this LIMITED WARRANTY exceed the total invoiced price of the merchandise.

9. Waiver

The failure of either Party on any occasion to exercise a right granted hereunder shall not operate as a waiver of such right as to subsequent occasions, and shall not effect a modification of these Terms and Conditions.

10. Governing Law

The laws of the state of Oregon shall govern these Terms and Conditions, together with all rights, obligations, and disputes arising out of or related thereto. The Parties hereby expressly consent to the exclusive jurisdiction and venue of the United States District Court for the District of Oregon, in any suit or action, or proceeding. Purchaser consents to the jurisdiction and venue of the Circuit Court of the State of Oregon for Douglas County.

Purchaser agrees to pay Orenco for all of Orenco’s investigation and litigation costs, including reasonable attorneys’ fees, whether incurred before, during, or after trial or appeal.

Disclaimer. Except as specifically provided in this LIMITED WARRANTY, ANY IMPLIED WARRANTY, OR CONDITION OF MERCHANTABILITY, OR SATISFACTORY QUALITY, ACCURACY OF INFORMATIONAL CONTENT, OR ANY OTHER AGREEMENT TO INDEMNIFY OR HOLD HARMLESS ANY PERSON, OR ENTITY, OR RELATING TO THESE TERMS AND CONDITIONS, IS EXPRESSLY DISCLAIMED AND EXCLUDED TO THE EXTENT ALLOWED BY LAW.