

## **General Terms and Conditions for Goods and/or Services**

1. **Applicability.** These General Terms and Conditions for Goods and/or Services (“Terms”), together with the terms listed on the face of the accompanying purchase order (“Order”), are the only terms which govern the purchase of the goods (“Goods”) and services (“Services”) and, together with the Goods, the “Work”) specified in the Order by Karl Senner, L.L.C. (the “Buyer”) from the party to whom the Order is addressed (the “Seller”). These Terms and the accompanying Order comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, and communications, both written and oral, with respect to the Work. These Terms and the Order prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s general terms and conditions of sale or any other document issued by Seller in connection with the Work. No change to these Terms or the Order is binding upon Buyer unless it is in writing, specifically states that it amends the Order and these Terms, and is signed by an authorized representative of Buyer.

### **2. Delivery of Goods; Performance of Services.**

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the “Delivery Date”). If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date.

(b) **Performance of Services.** Seller shall provide the Services to Buyer as described and in accordance with the schedule set forth in the Order and in accordance with these Terms.

(c) Seller acknowledges that time is of the essence with respect to Seller’s obligations hereunder and the timely delivery of the Goods and Services.

3. **Quantity.** If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense.

4. **Shipping Terms.** All Goods shall be delivered to the address specified in the Order (the “Delivery Location”) during Buyer’s normal business hours or as otherwise instructed by Buyer. Delivery shall be made in accordance with the terms on the face of the Order. Seller shall give written notice of {N1918558 -}

shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall promptly provide Buyer all shipping documents, including the commercial invoice, packing list, and any other documents necessary to release the Goods to Buyer.

5. **Title and Risk of Loss.** Title and risk of loss for the Goods pass to Buyer upon delivery of the Goods to the Delivery Location.

6. **Inspection of Goods.** Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, within thirty (30) days, replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Order for cause pursuant to Section 17. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

7. **Seller’s Obligations Regarding Services.** Seller shall:

(a) before the date on which the Services are to start, obtain, and at all times during the term of the Order, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;

(b) comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, and general health and safety practices and procedures;

(c) maintain complete and accurate records relating to the provision of the Services pursuant to the Order, including records of the time spent and materials used by Seller in providing the Services in such form as Buyer shall approve. During the term of the Order, upon Buyer’s written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;

(d) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "Permitted Subcontractor"). Buyer's approval shall not relieve Seller of its obligations under the Order, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of the Order and these Terms as if they were Seller's own employees. Nothing contained in the Order or these Terms shall create any contractual relationship between Buyer and any Seller subcontractor or supplier, including any Permitted Subcontractor;

(e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of these Terms and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer;

(f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and

(h) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer's written instructions or authorization.

8. Change Orders Regarding the Services. Buyer may, by written instructions and/or drawings issued to Seller (each a "Change Order"), order changes to the Services. Seller shall within ten (10) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and these Terms. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under the Order or these Terms.

9. Price. The price of the Work is the price stated in the Order (the "Price"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in {N1918558 -}

the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, applicable customs duties, fees, and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

10. Payment Terms. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms and the Order. Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith.

11. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller under the Order.

12. Warranties.

(a) Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date, all Goods will:

(i) be free from any defects in workmanship, material and design;

(ii) conform to applicable specifications and other requirements specified by Buyer;

(iii) be fit for their intended purpose and operate as intended;

(iv) be merchantable;

(v) be free and clear of all liens, security interests or other encumbrances; and

(vi) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer.

(b) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Order and these Terms.

(c) The foregoing warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Goods and pay for all related

expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer, and, if applicable, (ii) repair or re-perform the applicable Services.

13. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer, its affiliates and subsidiaries, and their respective employees, officers, agents, representatives and insurers (collectively, “Indemnitees” and individually, an “Indemnitee”) from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorneys’ fees (collectively, “Losses”) arising out of or related to any Goods and Services purchased from Seller or Seller’s negligence, willful misconduct or breach of these Terms and/or any Order.

14. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Indemnitees against any and all Losses arising out of or in connection with any claim that such Indemnitee’s use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Buyer’s or Indemnitee’s prior written consent.

15. Insurance. During the term of the Order, Seller shall, at its own expense, maintain and carry, with financially sound and reputable insurers, commercial general liability insurance (including products liability and completed operations) in a sum no less than \$5,000,000.00 per occurrence; worker’s compensation up to statutory limits; and employer’s legal liability insurance in a sum no less than \$1,000,000.00 per accident or occurrence. Except where prohibited by law, Seller shall require its insurers to waive all rights of subrogation against Buyer and its insurers, and Buyer shall be named as an additional insured under the commercial general liability insurance policy. Seller shall provide Buyer with thirty (30) days’ prior written notice in the event of a cancellation or material change in Seller’s insurance policy. Upon Buyer’s request, Seller shall provide Buyer with a certificate of insurance from Seller’s insurer(s) evidencing the insurance coverage and endorsements specified in these Terms.

16. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order.

{N1918558 -}

17. Termination. In addition to any remedies that may be provided under these Terms, Buyer may terminate the Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods or the Seller’s delivery of the Services, if Seller has not performed or complied with any of these Terms or the Order, in whole or in part. If Buyer terminates the Order for any reason, Seller’s sole and exclusive remedy is payment for the Goods received and accepted and any Services accepted by Buyer prior to the termination.

18. Limitation of Liability. Nothing in these Terms shall exclude or limit (a) Seller’s liability under Sections 12 (Warranties), 13 (General Indemnification), 14 (Intellectual Property Indemnification), and 20 (Confidential Information), or (b) Seller’s liability for fraud, personal injury or death caused by its negligence or willful misconduct.

19. Waiver. No waiver by any party of any of the provisions of the Order or these Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order or these Terms shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

20. Confidential Information. All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, 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 the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

21. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to be in default for any failure

or delay in fulfilling or performing any term in the Order or these Terms, when and to the extent such party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, epidemics or pandemics; (c) war, invasion, terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) national or regional emergency; and (f) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive calendar days following written notice given by it under this Section 21, the other party may thereafter immediately terminate the Order upon written notice.

22. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

23. Relationship of the Parties.

(a) The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture 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. No relationship of exclusivity shall be construed from the Order.

(b) For any Services performed in Louisiana or where Seller's employees are otherwise covered by the Louisiana Workers' Compensation Law, La. R.S. 23:1021 *et seq.*, Buyer and Seller agree that the Services and operations performed by Seller and its employees pursuant to the Order and these Terms are an integral part of and are essential to the ability of Buyer to generate Buyer's and its affiliates goods, products and services, and that Seller's Services shall be considered part of Buyer's trade, business, and occupation, for purposes of La. R.S. 23:1061(A)(1). Furthermore, Buyer and Seller agree that Buyer is the principal or statutory employer of Seller's employees for purposes of La. R.S. 23:1061(A) only.  
{N1918558 -}

Irrespective of Buyer's status either as the principal or statutory employer or as the special employer (as defined in La. R.S. 23:1031(C)) of Seller's employees, and regardless of any other relationship or alleged relationship between Buyer and Seller's employees, Seller shall be and remain at all times primarily responsible for the payment of Louisiana workers' compensation benefits to such employees, and shall not be entitled to seek contribution for any such payments from Buyer. This provision is limited to and shall apply only in and to the extent of instances involving coverage of the Louisiana Workers' Compensation Law.

24. No Third-Party Beneficiaries. The Order is for the sole benefit of the parties thereto 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 these Terms or the Order.

25. Governing Law & Venue and Jury Trial Waiver. All matters arising out of or relating to the Order or these Terms shall be governed by and construed in accordance with the internal laws of the State of Louisiana without giving regard to its conflict of laws provisions or rules. Any legal suit, action or proceeding arising out of or relating to the Order or these Terms shall be exclusively instituted in the federal district or state courts located in Jefferson Parish, State of Louisiana, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Each party irrevocably waives its right to a jury trial with regard to any disputes or claims arising out of or related to these Terms and any Order, regardless of the legal basis of any such disputes or claims, including breach of contract, tort or any other legal basis.

26. Cumulative Remedies. The rights and remedies under these Terms are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

27. Notices. All notices, request, 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 on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid).

28. Severability. If any term or provision of the Order or these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Order or these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

29. Survival. Provisions of the Order or these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Order including, but not limited to, the following provisions: Setoff, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Confidentiality.