PEERLESS CONVEYOR AND MANUFACTURING COMPANY (d/b/a Peerless Engineering and manufacturing Company)

**TERMS AND CONDITIONS**

1. **OFFER & ACCEPTANCE:** Peerless Manufacturing Company (“Seller”) acceptance of Buyer’s order to purchase products is expressly made conditional on assent to these Terms and Conditions, which along with the Sales Order constitute a binding “Contract” between the parties. This Contract constitutes the complete and final agreement between Seller and Buyer for the products. Any additional or different terms or conditions contained in any document furnished by Buyer, including but not limited to, any purchase order or any acknowledgement, are deemed to be material and are herby objected to and rejected by Seller. If such agreement shall be deemed an offer or counter-offer by Buyer, Seller expressly rejects such offer or counter-offer and limits acceptance to these Contract terms and expressly objects to any different or additional terms proposed by Buyer. Any actually performance by Buyer or Seller thereafter shall be deemed a renewal of the offer contained in this Contract and acceptance of this Contract without change. In the event of a conflict between the terms of this Contract and the terms of any other

document, the terms of this Contract shall control. This offer to purchase Seller’s products is valid for thirty (30) days form the date of the Sales Order.

2.**PAYMENT TERMS:** All prices specified in this Contract are FOB Seller’s designated location which constitutes delivery. All risk of damage to or loss of the

products from any cause whatsoever shall pass to Buyer upon delivery, even if Seller arranges for shipment of the product. Unless otherwise expressly provide on

the reverse hereof, payment shall be made within thirty (30) days form the earlier of the date of delivery or the date of an invoice, without discount. Any discount

which may be expressly provide on the reverse hereof applies to the sale price of the products at the shipping point, and does not apply to any charges made for

taxes, storage, loading or transportation. All payments shall be made in United States dollars. Interest will be charged at the rate of eighteen percent (18 %) per

annum, or the maximum interest rate allowable by applicable law, whichever is lower, on all unpaid invoices. Buyer shall pay all taxes and charges of any nature

imposed by any federal, state, or local governmental authority by reason of the sale or delivery of the products whether levied or assessed against Seller, Buyer, or

the products. Such applicable taxes or charges, if not included in this Contract, shall be invoiced separately. If, in Seller’s opinion, reasonable doubt exists as to

Buyer’s financial condition, Seller may, at any time and without prejudice to any other remedies, suspend or terminate performance of any order, decline to ship,

stop any material in transit, or require full or partial payment by Seller in advance.

3. **DELIVERY:** Any delivery of promise date indicated on the Sales Order is an estimate of the date Seller believes the products will be available for delivery, provided, however, Seller shall not be responsible for any delays in delivery.

4. **WARRANTY**:

• **Limited Warranty; Exclusion of Third Party Components:** Subject to the terms, conditions and limitations contained herein, Seller warrants only to the original

Buyer that (a) Seller’s new equipment products and Seller’s new component products will not fail to operate in accordance with their respective specifications

due to the defects in material or workmanship during the period which ends two (2) years form the date of delivery, normal wear and tear excluded, and (b)

Seller’s new equipment products will not incur a failure of their respective structural components (i.e. , trusses) due to defects in material or workmanship at any

time during the period which ends five (5) years form the date of delivery, normal wear and tear excluded. The foregoing periods are sometimes referred to as

“original warranty periods.” **THE FOREGOING LIMITED WARRANTY DOES NOT APPLY TO ANY PART, PORTION OR COMPONENT OF ANY**

**PRODUCT WHICH IS MANUFACTURED BY A THIRD PARTY (“Third -Party Component”)**.

• **DISCLAIMER OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY:** THE LIMITED WARRANTY SET FORTH IN THE FOREGOING PARAGRAPH IS THE SOLE AND EXCLUSIVE WARRANTY. WITH RESPECT TO THE PRODUCTS, SELLER MAKES NO OTHER EXPRESS WARRANTY OF ANY KIND OR NATURE AS TO THE PRODUCTS OR THEIR PERFORMANCE EXCEPT FOR THOSE LIMITED WARRANTIES EXPRESSLY SET FORTH IN THE FOREGOING PARAGRAPH AND SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE CONCERING THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY REPRESTATIONS OR WARRANTY THAT THE PRODUCTS COMPLY WITH ANY LAW, RULE OR REGULATION. SELLER MAKES NO WARRANTIES WITH RESPECT TO

ANY THIRD PARTY COMPONENT AND SELLER SPECIFICALLY SELLS SUCH THIRD-PARTY COMPONENTS “AS IS” WITHOUT ANY WARRANTY.

**FURTHER, SELLER MAKES NO IMPLIED WARRANTY OF ANY KIND OR NATURE WITH RESPCT TO ITS PRODUCTS OR ANY**

**THIRD-PARTY COMPONENTS AND SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED**

**TO, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT,**

**OR COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION.** IN ADDITION, SELLER EXPRESSLEY

DISCLAIMS TO THE FULLEST ALLOWED BY LAW, RULE OR REGULATION ANY WARRANTY PROVIDED UNDER ANY FEDERAL, STATE OR

LOCAL LAW, RULE OR REGULATION.

• **Terms and Conditions of Warranty; Voiding of Warranty; Notice Requirements:** The limited warranties set forth above shall be null and void if (a) any

alternations or modifications are made to a product, (b) a product is not maintained in strict compliance with the maintenance requirements set forth in the maintenance manual for such product or otherwise provided to Buyer of such product, (c) any repairs are made to a product which are not authorized by Seller in writing, (d) any failure of a product to comply with the above limited warranty is not reported to Seller in writing within thirty (30) days of the date such failure first

occurs, (e) a product is operated after the failure covered by warranty first occurs, (f) a product is used for any purpose other than for the purpose for which it was

manufactured, (g) a product is not operated in strict compliance with the terms and conditions set forth in any operating manual for the product (including, but not

limited to exceeding the load bearing capacity of the product), (h) a product is abused or damaged, (i) Buyer fails to deliver the product to Seller for inspection

and testing if requested by Seller or Buyer disposes of the product or any part of component on or before the sixtieth (60th) day after sending a written claim to

Seller, or (j) such failure of the limited warranty results from a failure of any Third-Party Component.

• **Course of Dealing; Course of Performance; Usage of Trade:** No course of dealing or course of performance of Seller with respect to the products sold under

this Contract or with respect to any of its products to whomever sold and no usage of trade shall be considered in interpreting this Contract or any part thereof and

none of the foregoing shall be considered a waiver or modification of any such terms, conditions, disclaimers, or limitation of the limited warranties or disclaimers

contained in this Contract. No statement, whether written or oral, made by any employee, sales person, distributor, agent or contractor of Seller which is not

set forth in this Contract shall be considered a representation or warranty with respect to any product, its specifications or its performance sand all such statements

are hereby disclaimed.

• **Exclusive Remedies for Breach of Warranty:** The sole and exclusive remedy for any failure of any product to comply with the limited warranty set forth above

or any other warranty imposed upon Seller by law, if any, shall, at the election of Seller, in its sole discretion, be either (a) the repair or replacement of the product

or component which failed to comply with such warranty or (b) the refund of the purchase price of the product. Buyer is responsible for all labor costs in connection

with the repair or replacement of any equipment or component product; however, Seller will be responsible for its own labor performed in connection with

any repair of equipment products at Seller’s location. Except as provided below, any repair or replacement shall carry the same warranty as the original product

but only for the remainder of the original warranty period. Buyer’s exclusive remedy with respect to any claim arising out of or as a result of Third-Party Component

shall be against the third-party manufacturer.

• **Warranty Claims; Notice Requirement; Limited Time to ring Claims:** Any and all claims under the above limited warranty shall be made to Seller only in

writing and not later than thirty (30) days after the date the product first fails to comply with the above limited warranty but in no event later than the expiration

of the original warranty period with respect to which the claim is being made. Any claim under the above limited warranty made after such period for making a

claim shall be null and void. After receipt of written notice of the warranty claim, Seller shall determine whether to (a) repair or replace the product or part or (b)

refund the purchase price of the product. Seller may require Buyer to return any product or part thereof which Buyer claims to be defective to Seller at Buyer’s

cost for inspection as a condition to any claim under the above limited warranty. No product or part may be returned to Seller without Seller’s prior written authorization.

If a product which is returned is determined by Seller in its sole discretion not to have failed to comply with the limited warranty, Buyer shall pay costs

of removal, repair and/or replacement for such product. If a product which is returned is determined by Seller in its sole discretion to have failed to comply with

the limited warranty, Seller shall pay for all repair and/or replacement costs for such product (or refund the purchase price if so elected by Seller) and Seller shall

reimburse Buyer for the reasonable costs of shipping the product or component to Seller.

• **Limitation on Liability for Breach of Warranty and Other Claims:** If the warranty and the remedy for any failure of any product to comply with any warranty

are deemed for any reason to fail their intended purpose, Seller’s liability for any failure of any product to comply with any such warranty, together with any

and all other liability, if any, arising out of or in connection with such product, including, but not limited to, all claims, whether in Contract, tort, or otherwise,

arising out of, connected with, or resulting for the manufacture, sale, delivery, resale, repair, replacement, or use of the product, shall not exceed the purchase

price for such product. In no event shall Seller be responsible or liable to Buyer or any third party under any circumstances for any indirect, consequential, special,

punitive or exemplary, damages or losses, including, but not limited to, damages for loss of profits, goodwill, use of the product or any other equipment or

other intangible losses which may be incurred in connection with the product regardless of the type of claim or the nature of the cause of action, even if Seller has

been advised of the possibility of such damage or loss. Any and all claims that Buyer has against Seller, whether or not Buyer is aware of such claims, must be

brought by Buyer within the applicable thirty (30) days after the date that such claim first arose, but in any event within the applicable warranty period set forth

above. Any claim not brought by Buyer within the applicable thirty (30) day period shall be deemed null and void.

5. **IMDEMNIFICATION:** Buyer will indemnify and hold harmless Seller, its affiliates and their respective officers, directors, employees, agents and other representatives and defend any action brought against same with respect to any claims, judgments, actions, suites, demands, damages, liabilities, costs or expenses

(including, but not limited to, reasonable attorneys’ fees and legal expenses) associated with or arising from the ownership, use or operation of the products by

Buyer or any third party, including without limitation, product liability, an international, federal or state occupational safety and health statute, or any other governmental regulations or laws, and also with respect to any fault or negligence of the seller. If buyer fails to fulfill any of its obligations under this paragraph or

any other part of this agreement, buyer agrees to pay seller's costs, expenses, and attorney fees incurred by seller to enforce or establish its rights under this paragraph

or any other part of this agreement.

6. **TERMINATION OF PERFORMANCE:** Buyer may cancel its order only with the written consent of Seller and upon terms that will indemnify Seller for any

loss, damage and expense arising from such cancellation. Seller may terminate this Contract pursuant to Sections 2 and/or 11 hereof, and in such event, Seller

shall have no further reliability to produce or ship any products hereunder and shall have no liability for damages to Buyer or any third party.

7. **TECHNICAL ADVICE:** No obligation or liability shall arise out of Seller’s rendering of technical advice in the connection with Buyers’ order or products.

Any technical advice furnished, or recommendation made by Seller or any employee or representative of Seller, concerning any use or application of any products

or parts furnished under this Contract is believed to be reliable, but Seller makes no warranty, express or implied of results to be obtained. Buyer assumes all

reasonability for loss or damage resulting form the handling or use of any such products or part is accordance with such technical advice or recommendation. The

selection of the products ordered, or design of any customer products, shall be Buyer’s sole and ultimate responsibility, and Seller shall have no liability whatsoever

for any design defects of custom products, or if the products ordered are unsuitable for Buyer’s intended use. Any advice or assistance provided by Seller to

Buyer in connection with Buyer’s selection or design of the products is at Buyer’s risk, and Seller makes no representation or warranty whatsoever in connection

with such advice or assistance.

8. **ASSIGNMENT:** Buyer shall not assign its rights or obligations under this Contract without the prior written consent of Seller, which consent may be withheld

for any reason in the sole discretion of Seller. Any attempt at such assignment by Buyer without the prior written consent of Seller shall be deemed null and void.

This Contract will be binding upon the parties hereto, and the successors and permitted assigns.

9. **SECURITY INTEREST OF SELLER:** Title to the products will not pass to Buyer until all required payments have been made to Seller. Until the purchase

price and all other applicable costs and expenses are paid in full, Seller reserves a purchase money security interest in the products and the proceeds therefrom,

and Seller thereby possesses the rights of a secured party under the Uniform Commercial Code. Upon Seller’s request, Buyer shall execute all necessary financing

statements and other documents evidencing this security interest with the appropriate state and local authorities. Seller is entitled to and is hereby granted reasonable

access to Buyer’s locations as necessary to exercise its remedies as a secured party.

10. **GOVERNING LAW:** This Contract shall be construed, interpreted, and governed by the laws of the State of Kansas without regard to its conflict of laws

principles. The exclusive forum for any disputes arising out of or relating to this Contract shall be any federal or state court sitting in the State of Kansas.

The parties irrevocably consent to such exclusive jurisdiction in such courts and to the proper venue therein.

11. **FORCE MAJEURE:** Seller does not assume the risk of and shall not be liable for failure to perform any obligation relating to the products caused by civil

insurrection, war, fire, strike, labor disturbances, acts of God, acts or omissions of Buyer, acts or omissions of the United States Government, floods, epidemics,

freight embargoes, shortages of fuel, energy or materials, failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, or any other cause

beyond the reasonable commercial control of Seller

12. **NOTICES:** Any notices, consents or other communications required or permitted under this Contract must be in writing and delivered personally, overnight air

courier, registered or certified mail or facsimile. Unless otherwise stated in this Contract, notices, consents or other communication will be deemed received (a)

on the date delivered, if delivered personally or by facsimile transmission; (b) on the next business day if sent via overnight air courier; or (c) three (3) business

days after being sent, if sent by registered or certified mail.

13. **SEVERABILITY; WAIVER:** The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract. No waiver of any of the provisions of this Contract shall be deemed, or shall constitute a waiver of any other provision, whether or not

similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. The Section

headings included herein are for the convenience of the parties only and no way alter, modify, amend, limit or restrict the contractual obligations of the parties.

14. **NO THIRD PARTY BENEFICIARIES; SETOFF:** Nothing in this Contract is intended to, or shall, create any third-party beneficiaries, whether intended or

incidental and neither party shall make any representations to the contrary. Seller shall have the right to deduct from any sums it owes to Buyer, and sums or the

value of any obligation owed by Buyer to Seller.

15. **ENTIRE AGREEMENT:** The terms set forth herein constitute the sole terms and conditions of the Contract between Buyer and Seller. Notwithstanding the

foregoing or any other term of this Contract, to the extent this Contract conflicts with the terms or conditions of any written distributor agreement between the

parties, the written distributor agreement shall control. No other warranty, term, condition or understanding, whether oral or written shall be binding upon Seller,

unless hereafter expressed in writing, approved and signed by Seller.

16. **SURVIVAL**: The provisions of Sections 3, 4, 5, and 7 through 16 shall survive the termination and performance of this Contract.