

TERMS AND CONDITIONS OF SALE OF PRODUCTS
SCM Group North America, Inc.

THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

BY PLACING AN ORDER FOR PRODUCTS FROM THIS WEBSITE, YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS.

YOU MAY NOT ORDER OR OBTAIN PRODUCTS FROM THIS WEBSITE IF YOU (A) DO NOT AGREE TO THESE TERMS, (B) ARE NOT THE OLDER OF (i) AT LEAST 18 YEARS OF AGE OR (ii) LEGAL AGE TO FORM A BINDING CONTRACT WITH SCM GROUP NORTH AMERICA, INC., OR (C) ARE PROHIBITED FROM ACCESSING OR USING THIS WEBSITE OR ANY OF THIS WEBSITE'S CONTENTS BY APPLICABLE LAW.

These terms and conditions (these "**Terms**") apply to the purchase and sale of products through <https://www.scmgroup.com> (the "**Site**") by anyone using this Site (the "**Customer**", "**you**", "**yours**"). These Terms are subject to change by SCM Group North America, Inc. (referred to as "**SCM**", "**us**", "**we**", or "**our**" as the context may require) without prior written notice at any time, in our sole discretion. The latest version of these Terms will be posted on this Site, and you should review these Terms before purchasing any products that are available through this Site. Your continued use of this Site after a posted change in these Terms will constitute your acceptance of and agreement to such changes. These Terms are an integral part of the Website Terms of Use that apply generally to the use of our Site. You should also carefully review our Privacy Policy before placing an order for products through this Site.

1. **PURCHASE OF GOODS.** You can purchase machinery and parts (the "**Products**") through our Site and may have options to finance your purchase using a third-party financing company (a "**Lender**") either offered through our Site or otherwise. If you elect to use a Lender, you will be bound by those separate terms and conditions that you agree with your Lender.

2. **SHIPPING.** Approximate Shipping Date: within 5 working days, unless noted on the order confirmation. SCM will provide order confirmation with anticipated ship date indicated. **Note:** (i) voltage to the Products is as specified in the machine specifications; (ii) some listed accessories may arrive following delivery of the Products to the Customer. Products are sold FOB: Duluth, GA or Carson, CA. Customer may arrange transportation or SCM will provide quote for transportation to final destination at customer's expense. The Purchase price does not include taxes associated with the transaction. SCM is not responsible for state and local taxes.

3. **PRICE AND PAYMENT.**

(a) All prices posted on this Site are subject to change without notice. The price charged for a Product or Service will be the price in effect at the time the order is placed and will

be set out in your order confirmation email. Price increases will only apply to orders placed after such changes. Posted prices do not include taxes or charges for shipping and handling. All such taxes and charges will be added to your merchandise total and will be itemized in your shopping cart and in your order confirmation email. We are not responsible for pricing, typographical, or other errors in any offer by us and we reserve the right to cancel any orders arising from such errors. The purchase price shall be paid in USD by CREDIT CARD or other means of payment offered on the Site.

(b) Terms of payment are within our sole discretion and, unless otherwise agreed by us in writing, payment must be received by us before our acceptance of an order. We accept all major credit cards for all purchases. You represent and warrant that (i) the credit card information you supply to us is true, correct, and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any.

4. **SCM'S ACCEPTANCE.** You agree that your order is an offer to buy, under these Terms, all Products listed in your order. All orders must be accepted by us or we will not be obligated to sell the Products to you. We may choose not to accept any orders in our sole discretion. After having received your order, we will send you a confirmation email with your order number and details of the items you have ordered. Acceptance of your order and the formation of the contract of sale between us and you will not take place unless and until you have received your order confirmation email. If Customer submits a purchase order or other document, it shall in no way amend or supersede any provision in these Terms, and these Terms shall govern. SCM may deposit any monies received from Customer, pending a determination of whether SCM will accept Customer's offer, and such act shall not constitute acceptance. If SCM rejects Customer's offer, then SCM shall remit, without interest, all such monies.

5. **RETURNS AND REFUNDS.** Unless Customer sooner notifies SCM in writing, Customer shall be deemed to have effected final acceptance of the Products including the associated software, upon the *earliest* of: (i) Customer's use of the Products for any purpose other than conducting acceptance testing, (ii) ten (10) days following installation of the Products, or (iii) thirty (30) days following delivery of the Products if installation was delayed at Customer's request or was necessary because the installation site was not prepared for installation. Any rejection of the Products must be made in writing and delivered to SCM prior to final acceptance and must include a detailed description of the alleged nonconformity.

6. **TAXES.** The purchase price does not include any federal, state, provincial, or local property tax, license, privilege, sales, use, excise, gross receipts, value added, or other taxes that may now or hereafter be applicable to, measured by, or imposed upon, or with respect to, any transaction or any property (including without limitation its sale, its value, or its use), related to these Terms (the "**Taxes**"). Customer agrees to reimburse SCM for any Taxes that SCM is required to pay. If the parties agree that any person or entity other than SCM will remit any of the Taxes to the proper authority, then Customer shall indemnify and hold SCM harmless from any liability arising out of such Taxes, as well as any interest or penalties related thereto. Any applicable State or Local Sales or Use Tax (the "**Sales Tax**") will be added to a final invoice that includes the Final Payment. SCM will collect and remit the Sales Tax when required to do so, unless either the Customer or Lender furnishes a valid resale/exemption certificate to SCM relieving SCM of the requirement to collect and remit the Sales Tax. If the certificate furnished to SCM is held invalid, then the party that furnished such certificate to SCM shall pay the Sales

Tax (plus all applicable penalties and interest at the rate of the lesser of 1½ percent per month or the maximum rate permitted by law) not collected as a result of relying on such invalid certificate. The sum of the purchase price and all other amounts due and payable to SCM pursuant to these Terms, including but not limited to Taxes and Sales Taxes, shall be referred to as the “**Full Purchase Price**”.

7. **MODIFICATIONS AND SPECIAL ORDERS.** Contact SCM for custom orders.

8. **LIABILITY WAIVER AND INDEMNIFICATION.** Customer acknowledges that SCM is not affiliated with Customer in any way and that SCM does not warrant against and shall not be responsible for any economic loss, property damage, product liability or personal injury, claimed by Customer, its agents, employees, insurance carriers, subrogees, successors, or assigns, arising out of the use of the Products. Unless otherwise agreed upon by SCM in writing, Customer has the sole responsibility for the installation, operation and maintenance of the Products and use of all available safety equipment and for complying with all requirements of OSHA and any other state or federal safety laws or regulations as they may pertain to the Products. Customer acknowledges and agrees that SCM shall not be liable in any manner for and that Customer shall defend, indemnify, and hold SCM harmless from and against any and all claims, causes of action, suits, proceedings, costs, fees, damages, penalties, losses, liabilities, and expenses (including reasonable attorneys’ fees and litigation expenses) of any kind arising out of or attributable to Customer’s or its agents’ (i) negligence or willful misconduct, (ii) misuse or unauthorized modifications, repairs, or alterations to the Products, (iii) improper installation, storage, maintenance or operation of the Products, and (v) failure to strictly follow, implement and abide by all applicable operating instructions, safety instructions, maintenance instructions, training recommendations, manuals, warnings, laws, or regulations.

9. **PICKUP / DELIVERY.**

(a) The following steps should be followed upon pickup or delivery of your Products. If in doubt about whether to accept or refuse the shipment, **CALL SCM FIRST BEFORE REFUSING!** The driver may attempt to leave without allowing for inspection. If so, **DO NOT SIGN, CALL SCM IMMEDIATELY!!!** Upon arrival at your facility, immediately count and inspect the Product. If visible damage, notate as “damaged” and sign. If possible, specify in writing to SCM **ONLY** what is damaged – examples: crate punctured, box smashed, machine hanging off pallet, pallet destroyed, etc....). **DO NOT NOTATE ADDITIONAL INFO ON THE DELIVERY RECEIPT!!!!**

(b) If no shortages or visible damages to outside packaging, sign for release. Inspect immediately while driver is present. If not, inspect immediately for any concealed damages. Concealed damages must be reported within 24 hours along with photos to SCM Logistics. Send email with subject heading: serial number or our order number and a detailed description of what is specifically damaged.

(c) Refusing a shipment without authorization from SCM Logistics or our warehouse staff may create chargeback expenses to the customer (including but not limited to return freight charges, re-shipping charges, repackaging cost, labor costs, etc....) should the inspection conclude damages were minimal/cosmetic! **Take photos of machine on the truck, as well as all four sides and the unloading process. Additional photos of the specific damaged part(s) should also be taken.** Open crate and check top and bottom of the packages not just the sides for any “hidden” damages. Notate on bill ANY and ALL shortages and damages including any irregularities on the machine even if the machine does not appear to have

damages to the packing. If in doubt, contact SCM Logistics or our warehouse staff directly. **NOTATE DAMAGED ONLY**– DO NOT SUGGEST LIABILITY OR PROVIDE FEEDBACK ON THE RECEIPT OR TO THE CARRIER.

(d) Contact the carrier to initiate the claim process directly with carrier. SCM will not assume risk.

(e) All replacements and repairs are the responsibility of the Receiver.

(f) Please feel free to contact SCM Logistics at (770) 813-8818 if unsure. Send via email a detailed description of specific damages along with all photos to SCM Logistics Dept. Failure to notify SCM Logistics Department same day or within 24 hours from delivery will result in damages NOT being covered by SCM GROUP NORTH AMERICA. All cost associated with replacement or repair will be the responsibility of the dealer or customer. No Exceptions!!!

10. **FORCE MAJEURE.**

(a) SCM shall not be liable or otherwise responsible for any default or delay in performance attributable to Force Majeure. "**Force Majeure**" shall mean acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, quarantine restrictions, factory conditions, strikes, labor disputes, delays in transportation, shortage of transport vehicles, labor or materials, or any other circumstance or cause beyond SCM's reasonable control.

(b) If SCM's performance is delayed by any such cause, the Shipping Date or time of completion will be extended by a period reasonably necessary to overcome the effect of such delay.

11. **TERMS OF PAYMENT.**

(a) Customer shall pay all amounts payable to SCM when due, time being the essence thereof. Customer's payment of the Full Purchase Price shall be secured by a first-priority security interest that Customer hereby grants and pledges to SCM in the Products. SCM shall have all rights of a secured party under Georgia law, with respect to the Products. Customer grants SCM the right to execute and file any documents necessary to perfect and preserve SCM's security interest in the Products.

(b) If the Full Purchase Price is not received when due, then (without prejudice to the right of SCM to immediate payment) Customer shall pay interest at the rate of the lesser of 1½ percent per month or the maximum rate permitted by law.

(c) SCM shall have the right to require full or partial payment in advance at any time if, in its opinion, the financial condition of Customer does not justify the terms of payment specified. Without limiting the foregoing, should Customer (i) commence voluntary bankruptcy or similar proceedings, (ii) consent to, or fail to contest in a timely and appropriate manner, any involuntary bankruptcy or similar proceedings, (iii) become insolvent, or (iv) admit its inability to pay its debts, then SCM shall have the right to cancel any order and recover damages from Customer. This Section 11(c) shall not apply if the acquisition is financed through a Lender.

12. **RISK OF LOSS AND INSURANCE.**

(a) Risk of loss of Products shall pass from SCM to Customer when SCM puts and holds the Products or any component part thereof at Customer's disposition and gives Customer notice thereof. SCM shall bear all risk of loss or damage in transit and shall be responsible to file claims with any carrier for damage occurring during shipment.

(b) Customer shall specifically insure the Products against "all risks," subject to normal exclusions, from the time the risk of loss passes to Customer, which includes, but is not limited to unloading and installation of the Products. If all amounts payable by Customer to SCM are not paid in full to SCM after installation, Customer shall continue to insure the Products pursuant to this Section until all amounts payable to SCM are paid in full. The amount of such insurance shall be no less than the Full Purchase Price, with loss first payable to SCM, as SCM's interest may appear. Evidence of such insurance, satisfactory to SCM, shall be submitted by Customer prior to shipment, or SCM may, at SCM's option, procure such insurance at Customer's expense plus interest in the amount of the lesser of 1½ percent per month or the maximum interest permitted by law.

13. WARRANTY AND LIMITATION OF LIABILITY.

(a) SCM warrants, for a period of one (1) year beginning on the date any machinery are accepted by the Customer (the "**Warranty Period**"), that the machinery will be free of defects in workmanship and materials, **excluding** belts, bearings, and common electrical parts, which carry a six-month warranty. This warranty does not include parts consumed during normal operation (wearable items), working units, or maintenance required in the ordinary course of operation. SCM shall warrant any replacement spare parts and accessories installed pursuant to this warranty for the period of ninety (90) days. Notwithstanding any other provision of these Terms, Customer has no right to assert a warranty claim, and SCM has no obligation to honor a warranty claim: (i) until the Full Purchase Price has been paid to SCM, or (ii) if Customer is in breach of any loan agreement with a Lender. If the acquisition is financed and Customer is in breach of the loan agreement with a Lender, then such breach shall not toll the running of the Warranty Period. If any failure to conform to this warranty occurs within the Warranty Period and the Full Purchase Price has been paid to SCM, then upon prompt written notification and written substantiation by Customer that the machinery has been stored, installed, operated, and maintained in accordance with all instructions of SCM (including but not limited to the use of recommended tooling) and with standard industry practice, and provided SCM is given reasonable access to the machinery during normal business hours, then SCM shall take the action described in this Section 13(a). If, upon receiving the aforementioned notification, SCM concludes that the nonconformity is a valid warranty claim and can be remedied by replacing one or more parts of the machinery and said replacement requires neither specialized training nor a significant time commitment, then SCM shall, at its expense, ship said part or parts to Customer and provide Customer the telephonic consultation necessary to assist Customer in replacing said part or parts. If such replacement fails to correct the nonconformity, or if, upon receipt of the aforementioned notification, SCM concludes that the nonconformity is a valid warranty claim and cannot be remedied as described above, then SCM shall, at its expense, perform, or direct subcontractors to perform, all work necessary to correct such nonconformity by either repairing or, at SCM's option, replacing any defective work or materials. This warranty shall not obligate SCM to perform any work required to provide access to a defect, including but not limited to the removal, disassembly, replacement, or reinstallation of products, not related to the machinery, or any materials, or structures that are not part of the machinery, if such activities must be undertaken solely to provide such access to the defect. If Customer alters or attempts to repair the machinery, or causes same to be effected, other than as specifically set forth in this Section 13(a), then the warranty set forth in this Section 13 shall be void.

(b) SCM warrants that the machinery shall be free of the rightful claim of any person arising from patent or trademark infringement. SCM shall indemnify Customer against any liability arising from successful claims of patent or trademark infringement in connection with the machinery or on account of any composition, process, invention, article, or appliance used or furnished by SCM in the performance of these Terms. SCM shall defend any actions brought against Customer for any such claim and shall pay any judgment that may be awarded against Customer for such claim. SCM shall have the right to participate in, or assume exclusively, the defense of any such claim or action.

(c) The Products shall not be subjected to test procedures other than those agreed to by SCM in writing. Payment of the Full Purchase Price shall not be contingent upon the results of any unauthorized testing procedures. Before any test may be used to evaluate the Products, Customer shall: (i) provide SCM with reasonable written notification of such test, (ii) allow SCM to be present during such test, and (iii) receive SCM's consent to the conditions of such test, which consent will not be unreasonably withheld. If a test is performed on the Products, and SCM has not consented to the conditions of such test, then the warranty set forth in this Section 13 shall be void.

(d) If Customer makes a warranty claim that proves to be invalid, then Customer shall pay SCM all of SCM's expenses incurred in connection with the investigation of said invalid claim and any work performed by SCM.

(e) THE WARRANTY SET FORTH IN SECTION 13(a) IS THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AGAINST SCM, INCLUDING WITHOUT LIMITATION FOR ANY ALLEGED DEFECTS WITH THE PRODUCTS. Fulfilling its obligations stated in Sections 13(a) and (b) shall constitute complete performance of all the obligations and liabilities of SCM with respect to, or arising out of, these Terms, regardless of whether a claim is based in contract law, tort law (including negligence, failure to warn, strict liability or otherwise), or other legal theory.

(f) THE WARRANTY SET FORTH IN SECTION 13(a) IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED. EXCEPT AS SET FORTH IN SECTION 13(a), SCM MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. Any other oral or written statements, whether contained in general advertising or other printed material, do not constitute warranties, and Customer agrees that it is not entering into these Terms in reliance upon any such statements.

(g) SCM shall not be liable for any special, indirect, incidental, or consequential damages of Customer, including but not limited to any loss of use or under-utilization of labor or facilities or any loss of revenue or anticipated profits, regardless of whether such purported liability is based in contract law, tort law (including negligence, strict liability, or otherwise), or other legal theory.

(h) Under no circumstances shall SCM's liability to Customer exceed the Full Purchase Price.

(i) Customer's failure to comply with the provisions of these Terms (including but not limited to timely payment of the Full Purchase Price) shall, *inter alia*, render the warranty set

forth in this Section 13 voidable at SCM's discretion; provided, however, the provisions of Sections 13(d)-(i) of these Terms still apply.

MACHINE MUST BE REGISTERED AT TIME OF PURCHASE FOR WARRANTY TO BE EFFECTIVE.

14. DEFAULT.

(a) Customer shall be deemed in default of these Terms if any one or more of the following occur: (i) Customer refuses or communicates an intent to refuse acceptance of delivery of any Products; (ii) Customer fails to make any payment in cash when due; (iii) Customer breaches the loan agreement if the acquisition is financed with a Lender; (iv) Customer breaches any other agreement with either SCM or Lender; (v) SCM, at SCM's option, deems itself insecure; or (vi) Customer breaches any provision of these Terms.

(b) Customer acknowledges that in some cases, Products are built pursuant to custom and unique specifications based upon Customer's specific needs, which are established between the parties, and in such cases, the Products cannot easily be resold in the market to a third party if Customer breaches these Terms. Accordingly, due to the custom nature of such Products, Customer acknowledges that if Customer breaches Section 14(a)(i) above, SCM's damages would be difficult to prove and agrees that the amount of forty percent (40%) of the Full Purchase Price ("**Damages**") shall constitute liquidated damages as a fair and reasonable estimate of SCM's partial loss and not a penalty, payable immediately upon demand to SCM. SCM may retain any amounts received from Customer pursuant to these Terms, including but not limited to any down payments, as payment for the Damages, and shall refund to Customer any amounts received from Customer pursuant to these Terms in excess of the Damages, if any.

(c) If Customer is in default pursuant to this Section 14, then upon written demand by SCM to Customer, SCM shall have the right to immediate possession of the Machinery, which Customer agrees to peacefully tender to SCM, or, in the sole discretion of SCM, the entire unpaid balance shall become immediately due and payable. SCM shall have all the rights and remedies of a purchaser or secured party, as established or permitted upon agreement by the Uniform Commercial Code, and all other rights as established in these Terms, which rights and remedies shall be cumulative. The standard by which fulfillment of rights and duties is to be measured shall be in the reasonable commercial judgment of SCM.

(d) A waiver by SCM of any breach or default shall not constitute a waiver of any subsequent breach or default.

(e) If SCM prevails in any legal action, arbitration or other proceeding related to these Terms, then Customer shall reimburse SCM for SCM's reasonable attorneys' fees, court costs, litigation expenses, and any other costs that SCM incurs in connection with such proceeding, including but not limited to costs of collection. This relief is in addition to any other relief to which SCM is entitled.

15. SOFTWARE. Customer is granted a non-exclusive, limited license to use certain software included with the Products (the "**Software**"). Customer agrees not to modify, copy, reverse engineer, or provide the Software to third parties without SCM's written consent. Notwithstanding any language in these Terms to the contrary, SCM makes no

representations, warranties, or indemnities regarding the Software included with the Products or that it will remain error-free or bug-free.

16. RESPONSIBILITIES.

(a) SCM does not accept responsibility for physical factors beyond the scope of our machine(s). These factors include, but are not limited to, local electrical codes, local building codes, local installation codes such as earthquake or hurricane codes. SCM does not accept responsibility for concrete or foundation preparations. SCM does not provide buck/boost of isolation transformers to accommodate improper proper supply.

(b) SCM machines generally conform to CE standards but are not UL listed. Any site inspection required by the customer or local authorities is at the cost of the customer as well as any remedy identified.

(c) Buyer agrees to abide by ANSI specification 01.1-2004, section 7.1 for guidelines on selection and management of machinery operating personnel and only allowed trained personnel to operate the machine

17. RELATIONSHIP OF THE PARTIES. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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.

18. GOVERNING LAW. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia.

19. ASSIGNMENT. The rights and liabilities of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns, although neither this Agreement nor the rights or obligations of Customer under this Agreement shall be assignable or transferable, either in whole or in part, without the prior written consent of SCM (which consent can be granted or withheld at the sole discretion of SCM).

20. WAIVER. No waiver by either party of any breach or obligation of the other party shall constitute a waiver of any other prior or subsequent breach of obligation.

21. NO THIRD-PARTY BENEFICIARIES. This Agreement does not and is not intended to confer any rights or remedies upon any person other than Customer.

22. CONSENT TO JURISDICTION. Any request for injunctive relief arising out of, in connection with, or relating to these Terms must be brought in Gwinnett County, Georgia or the United States District Court for the Northern District of Georgia. Customer consents to the jurisdiction of these courts and waives all objections to such venue and jurisdiction, including but not limited to any objection based on forum non convenience or improper venue.

23. ARBITRATION. If the parties are unable to resolve any dispute among themselves, all disputes arising out of, in connection with, or relating to this Agreement must be resolved by

arbitration before a single arbitrator. Such arbitration shall be conducted in Atlanta, Georgia, by the American Arbitration Association (“**AAA**”) and in accordance with the commercial rules of the AAA, as from time to time amended. The decision of the arbitrator shall be in writing, shall be signed by the arbitrator, and shall include findings of fact and a statement regarding the reasons for the arbitrator’s decision. The arbitrator shall not have the authority to award punitive or exemplary damages.

24. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement sets forth the entire agreement and understanding between the parties on the subject matter hereof and supersedes all prior discussions, negotiations, and/or written or verbal agreements between them. Customer acknowledges that neither SCM nor anyone on SCM’s behalf has made any representation, inducements, promises, or agreements, orally or otherwise, relating to the subject matter of this Agreement that are not embodied herein. Neither of the parties shall be bound by any conditions or definitions with respect to the subject matter hereof, other than as provided herein. No change or modification of this Agreement shall be valid unless the modification is in writing and signed by both parties.

25. **SEVERABILITY.** An arbitral, judicial or administrative declaration in any jurisdiction of the invalidity of any one or more of the provisions of this Agreement shall not invalidate the remaining provisions of this Agreement in any jurisdiction, nor shall such declaration have any effect on the validity or interpretation of this Agreement outside that jurisdiction.

26. **NOTICES.** All notices, requests, 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 in the Order Confirmation 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 email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

TERMS AND CONDITIONS FOR SERVICES

SCM Group North America, Inc.

1. APPLICABILITY.

(a) These terms and conditions for services (these “**Terms**”) are the only terms that govern the provision of services by SCM Group North America, Inc. or its affiliates (“**SCM**”) to purchaser of services (“**Customer**”) through <http://www.scmgroup.com> (“**Site**”).

(b) The final order confirmation provided through this Site (the “**Order Confirmation**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Order Confirmation, these Terms shall govern.

(c) These Terms prevail over any of Customer’s general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

2. **SERVICES.** SCM shall provide the services to Customer as described in the Order Confirmation (the “**Services**”) in accordance with these Terms.

3. **PERFORMANCE DATES.** SCM shall use reasonable efforts to meet any performance dates specified in the Order Confirmation, and any such dates shall be estimates only.

4. **CUSTOMER’S OBLIGATIONS.** Customer shall:

(a) cooperate with SCM in all matters relating to the Services and provide such access to Customer’s premises, and such office accommodation and other facilities as may reasonably be requested by SCM, for the purposes of performing the Services;

(b) respond promptly to any SCM request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for SCM to perform Services in accordance with the requirements of this Agreement;

(c) provide such Customer materials or information as SCM may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and

(d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

5. **CUSTOMER’S ACTS OR OMISSIONS.** If SCM’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, SCM shall not be deemed in breach of its obligations under

this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. CHANGE ORDERS.

(a) If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. SCM shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (i) the likely time required to implement the change;
- (ii) any necessary variations to the fees and other charges for the Services arising from the change;
- (iii) the likely effect of the change on the Services; and
- (iv) any other impact the change might have on the performance of this Agreement.

(b) Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a “**Change Order**”). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

(c) Notwithstanding Section 6(a) and Section 6(b), SCM may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Order Confirmation.

(d) SCM may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the Order Confirmation.

7. FEES AND EXPENSES; PAYMENT TERMS; INTEREST ON LATE PAYMENTS.

(a) In consideration of the provision of the Services by SCM and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Order Confirmation.

(b) Customer agrees to reimburse SCM for all reasonable travel and out-of-pocket expenses incurred by SCM in connection with the performance of the Services.

(c) Customer shall pay all invoiced amounts due to SCM on receipt of SCM’s invoice. Customer shall make all payments hereunder in US dollars.

(d) In the event payments are not received by SCM within 30 days after becoming due, SCM may:

(i) charge interest on any such unpaid amounts at a rate of 1% per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and

(ii) suspend performance for all Services until payment has been made in full.

8. **TAXES.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder.

9. **INTELLECTUAL PROPERTY.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of SCM in the course of performing the Services, including any items identified as such in the Order Confirmation (collectively, the "**Deliverables**") except for any Confidential Information of Customer or Customer materials shall be owned by SCM. SCM hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

10. **REPRESENTATION AND WARRANTY.** The SCM shall not be liable to Customer for any reason unless Customer gives written notice of complaint, reasonably described, to SCM within ten (10) days of the time when Customer discovers or ought to have discovered that the Services were defective. If SCM finds that the Services were faulty, it shall, in its sole discretion, either: (i) repair or re-perform such Services (or the defective part); or (ii) credit or refund the price of such Services at the pro rata contract rate. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SERVICE PROVIDER'S ENTIRE LIABILITY UNDER THESE TERMS.

11. **DISCLAIMER.** SERVICE PROVIDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

12. **LIMITATION OF LIABILITY.**

(a) IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE,

REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE YEAR PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13. **TERMINATION.** In addition to any remedies that may be provided under this Agreement, SCM may terminate this Agreement with immediate effect upon written notice to Customer, if Customer:

- (a) fails to pay any amount when due under this Agreement;
- (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or
- (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

14. **INSURANCE.** During the term of this Agreement, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) with financially sound and reputable insurers. Upon SCM's request, Customer shall provide SCM with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in these Terms. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against SCM's insurers and SCM.

15. **FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to SCM hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, pandemics, epidemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) 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.

16. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement 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.

17. **GOVERNING LAW.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia.

18. **ASSIGNMENT.** The rights and liabilities of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns, although neither this Agreement nor the rights or obligations of Customer under this Agreement shall be assignable or transferable, either in whole or in part, without the prior written consent of SCM (which consent can be granted or withheld at the sole discretion of SCM).

18. **WAIVER.** No waiver by either party of any breach or obligation of the other party shall constitute a waiver of any other prior or subsequent breach of obligation.

20. **NO THIRD-PARTY BENEFICIARIES.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than Customer.

21. **CONSENT TO JURISDICTION.** Any request for injunctive relief arising out of, in connection with, or relating to these Terms must be brought in Gwinnett County, Georgia or the United States District Court for the Northern District of Georgia. Customer consents to the jurisdiction of these courts and waives all objections to such venue and jurisdiction, including but not limited to any objection based on forum non convenience or improper venue.

22. **ARBITRATION.** If the parties are unable to resolve any dispute among themselves, all disputes arising out of, in connection with, or relating to this Agreement must be resolved by arbitration before a single arbitrator. Such arbitration shall be conducted in Atlanta, Georgia, by the American Arbitration Association (“AAA”) and in accordance with the commercial rules of the AAA, as from time to time amended. The decision of the arbitrator shall be in writing, shall be signed by the arbitrator, and shall include findings of fact and a statement regarding the reasons for the arbitrator’s decision. The arbitrator shall not have the authority to award punitive or exemplary damages.

23. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement sets forth the entire agreement and understanding between the parties on the subject matter hereof and supersede all prior discussions, negotiations, and/or written or verbal agreements between them. Customer acknowledges that neither SCM nor anyone on SCM’s behalf has made any representation, inducements, promises, or agreements, orally or otherwise, relating to the subject matter of this Agreement that are not embodied herein. Neither of the parties shall be bound by any conditions or definitions with respect to the subject matter

hereof, other than as provided herein. No change or modification of this Agreement shall be valid unless the modification is in writing and signed by both parties.

24. **SEVERABILITY.** An arbitral, judicial or administrative declaration in any jurisdiction of the invalidity of any one or more of the provisions of this Agreement shall not invalidate the remaining provisions of this Agreement in any jurisdiction, nor shall such declaration have any effect on the validity or interpretation of this Agreement outside that jurisdiction.

19. **NOTICES.** All notices, requests, 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 in the Order Confirmation 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 email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.