



GRANCO CLARK, INC. TERMS OF SALE

All sales of products and services by GRANCO CLARK, INC. ("Seller") are made on the following terms and conditions. In these Terms of Sale ("Terms"), any products sold by Seller to the buyer named in Seller's quotation or acknowledgment ("Buyer") are referred to below as "goods;" any services sold by Seller to Buyer are called "services;" and "Contract" means the contract between Seller and Buyer with respect to the goods and services.

1. **Agreement.** If Buyer has not otherwise agreed to these Terms, then Buyer's acceptance of delivery of, or payment for, the goods or services shall constitute Buyer's agreement to these Terms. Seller objects to and will not agree to any terms that are additional to or different from these terms. Terms that are printed on or contained in a purchase order or other form prepared by Buyer which are additional to, in conflict with or inconsistent with those herein shall be considered inapplicable and shall have no force or effect.

2. **Cancellation/Reschedule of Purchase Order(s).** Buyer may not cancel any purchase order after the Goods are transferred to the carrier for delivery to Buyer. In the event of any cancellation of all or part of any purchase order, Buyer agrees to pay Seller for all reasonable and allocable materials, material management, labor, overhead and general and administrative costs and expenses incurred as a result of any such cancellation, plus a reasonable profit within 10 days from the date of Seller's invoice.

3. **Payment Terms.** Unless otherwise specified in Seller's quotation or acknowledgment, payment in full of the price is due 30 days after shipment of the goods or performance of the services, except that if at any time Seller determines that Buyer's financial condition or credit rating does not justify a sale on credit or if Buyer is at any time in default in any indebtedness or obligation that Buyer owes to Seller, then Seller may require advance payment or may ship C.O.D. Any payment that is not made when it is due accrues a finance charge equal to the nominal rate announced by JP Morgan Chase as its price rate per month. Payment is to be made to Seller at the place and in the manner described on the invoice or by other direction provided to Buyer by Seller. In the event Buyer delays shipment beyond original ship date as agreed to by the parties, seller shall have the right in his sole discretion, to increase its prices upon notice to Buyer to reflect any unusual or unforeseen increase in Seller's costs, including but not limited to any increase in the cost of materials. Buyer may not offset or recoup any claim against amounts due Seller. Unless otherwise agreed in writing signed by Buyer and Seller, all payments shall be in U.S. Dollars.

4. **Delivery and Risk of Loss.** Unless Seller agrees otherwise in writing, Seller shall deliver the goods EXW (Incoterms 2010) Seller's facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped, except that if Seller's facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, and Buyer's facility are both located in the United States, then Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Seller's facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped. The risk of loss of the goods shall pass to Buyer upon identification of the goods to the contract between Buyer and Seller, whether such identification occurs at Seller's facility or a point of origin other than Seller's facility. Seller may deliver all the goods at one time or in portions from time to time.

5. **Taxes.** Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use, or other taxes, and Buyer shall be liable for all such taxes, whether or not Seller invoices Buyer for them. If Buyer does not furnish to Seller an appropriate sales and use tax exemption

certificate with respect to Buyer's purchase of the goods and if Seller is required by a governmental entity to collect and remit sales or use tax with respect to Seller's sale of the goods to Buyer, then Seller's invoice to Buyer for the purchase price shall include, and Buyer shall pay to Seller, the full amount of that tax.

6. **Unavoidable Delay.** If Seller's performance under this Contract is delayed or prevented due to events or circumstances outside of Seller's reasonable control (including, without limitation, labor disruption, accidents, unavailability of utilities or supplies or transportation, natural disasters, national or regional emergencies, epidemics or pandemics or other threats to human health, governmental orders or actions, riots or civil unrest), Seller shall have no liability whatsoever to Buyer with respect to such delay or failure of performance and any timeframes for Seller's performance shall be automatically extended accordingly. Further, delivery schedules and timing provided by Seller are based on Buyer's performance of all tasks required to be performed by Buyer (which may include, without limitation, provision of delivery point information, approval of drawings, provision of aluminum logs or billets if in-plant testing is required before shipment, identification of mode of transport of finished goods). Seller shall have no liability whatsoever to Buyer with respect to any delay in performance by Seller as a result of Buyer's failure to timely perform such tasks, and Buyer will be responsible for all additional costs incurred by Seller as a result of Buyer's failure to timely perform such tasks, including without limitation costs of offsite storage of goods for which delivery is delayed and of the related transport (including labor to load and unload into storage) of such goods.

7. **Changes.** Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of manufacture, but Seller will not, without Buyer's prior approval, make any changes in operational or dimensional specifications that Buyer submits. Stenographical and clerical errors in quotations are subject to correction.

8. **Limited Warranty; Remedies.**

(a) Seller warrants to Buyer for a period of one year from delivery of the goods (or installation of the goods if installed by Seller) that all goods manufactured solely by Seller ("**Products**") will be free from defects in material or workmanship under normal and intended use and service. The Products shall not be defective to the extent that (i) they conform with drawings of or specifications that have been approved by Buyer; (ii) they conform with goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by Buyer; (iii) they are damaged due to the method or length of storage by Buyer; or (iv) to the extent they conform to the specifications as changed or waived if Buyer's representative agrees, in writing, to the change in or waiver of the specifications for any Product. If there is a defect in any Products constituting a breach of the warranty provided herein, Seller will at its option either (x) repair or replace such Product free of charge (F.O.B. Seller's plant), or (y) in lieu of repair or replacement, refund to Buyer the original purchase price less the reasonable value of Buyer's use of the Products. Seller will not pay for any of Buyer's labor costs or charges for correcting defects or making additions nor will Seller accept any returned Products for credit unless the correction or return is authorized in advance by Seller in writing. Seller shall furnish to Buyer instructions for the disposition of the defective goods.

Seller shall have the option of requiring the return of the defective goods, transportation prepaid, and proof that the goods were not used, installed, or altered or subject to misuse or abuse to establish the claim. No goods shall be returned to Seller without its prior consent. The acceptance of any goods returned to Seller shall not be deemed an admission that the goods are defective or in breach of any warranty, and if Seller determines that the goods are not defective they may be returned to Buyer at Buyer's expense. This paragraph sets forth Buyer's sole and exclusive remedies for any defect in the goods. The rights and obligation under this warranty may not be assigned or delegated to a third party by Buyer without the prior written permission of Seller. Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the Products. Any statements to the contrary are hereby rendered null and void unless expressly agreed to in writing by an authorized officer of Seller.

(b) If a service proves to be defective (as defined below) within 90 days after Seller performs the service, then Seller shall, at its option, either re-perform the service, at Seller's expense, or refund to Buyer the price that Buyer paid to Seller for that part of the service that was defective. A service shall be considered "defective" if it is found by Seller to have failed to meet the standards in Seller's industry and if that failure materially impairs the value of the service to Buyer, except that if Buyer shall have approved or furnished to Seller specifications for the service, then the service shall not be considered defective to the extent it conforms to the specifications. This paragraph sets forth Buyer's sole and exclusive remedy for any defect in the services.

(c) Regarding any goods not manufactured or developed by Seller, Seller makes no warranties for these goods. Seller shall assign to Buyer any warranty for such goods or software extended to Seller by the actual manufacturer of the goods and Buyer shall look solely to such warranty in the event of a claim or action relating to such goods or software.

9. Limitations.

(a) **EXCEPT AS STATED IN PARAGRAPH 8, SELLER DOES NOT MAKE ANY WARRANTY AS TO THE GOODS OR SERVICES AND, IN PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS.**

(b) **SELLER SHALL NOT HAVE ANY TORT LIABILITY TO BUYER OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE GOODS OR SERVICES AND SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING FROM ANY PRODUCT DEFECT, DELAY, NONDELIVERY, RECALL OR OTHER BREACH. BUYER SHALL NOT HAVE ANY RIGHT OF REJECTION OR OF REVOCATION OF ACCEPTANCE OF THE GOODS.**

10. **Solvency and Security Interest.** Buyer represents that Buyer is solvent.

(a) Buyer grants to Seller a security interest in and the right of repossession of the goods, including a purchase money security interest, until full and final payment for the goods and services (including notes and collection costs) has been made. In the event of default in any payment due from Buyer to Seller, the full amount unpaid shall be due and payable on demand, and Seller may at Seller's option either (i) recover the full amount unpaid or repossess the goods and all additions thereto, wherever found, free from all claims whatsoever; or (ii) treat this contract as void and retain all payments made as rent for the use of goods.

(b) The goods or any part thereof, shall not be considered a fixture, or be incorporated into any real property by reason of its attachment thereto, and may be separated from

any real property, as well as personal property, for the purpose of repossession. Seller shall not be liable to Buyer nor shall Seller be subject to any legal proceedings, criminal or civil, for Seller's acts in such repossession. Seller shall not be liable to Buyer for the repayment of any money paid as part payment for the goods.

(c) Buyer agrees to execute any necessary instruments to perfect Seller's security interest in the goods and Seller shall have the benefit of the applicable Uniform Commercial Code and the remedies thereunder. Seller shall have the right to elect to assert a claim of a mechanic's lien against the real property upon which the goods are erected.

(d) Buyer shall not grant any right or security interest in or to the goods prior to payment in full to Seller for all goods and services without the prior written consent of Seller.

(e) Except as otherwise provided herein or required by law, pursuit of any right reserved herein or granted by law shall not preclude or waive the pursuit of any other such right.

11. **Insecurity and Adequate Assurance.** If Seller ever believes in good faith that it has grounds for insecurity as to Buyer's performance under these Terms, then Buyer shall provide adequate assurance of due performance within 10 days after Seller demands the assurance, which shall be considered to be a reasonable time. Buyer's failure to do so shall be considered to be a repudiation by Buyer of all then-existing contracts (including these Terms) that provide for Buyer to purchase goods from Seller ("**Outstanding Contracts**"). "Grounds for insecurity" include, without limitation, (i) Buyer's failure to make a payment to Seller or to perform another obligation under these Terms or any other Outstanding Contract; (ii) Buyer's insolvency; (iii) a deterioration in Buyer's financial condition after these Terms were entered into; and (iv) Buyer's failure to provide financial statements and other financial information to Seller promptly upon Seller's request. "Adequate assurance of due performance" includes, without limitation, providing a letter of credit or comparable security for all obligations of Buyer that then exist or that will arise in the future under all Outstanding Contracts.

12. **Permits and Compliance.** Seller is not responsible for obtaining any permit, inspection, or license that is required for installation or operation of the goods. Seller does not make any promise or representation that the goods will conform to any local law, ordinance, regulation, code, or standard.

13. **Site Preparation and Storage.**

(a) All necessary excavations, drainage, pilings, foundations, masonry, and concrete and any design drawings will be provided and set by the Buyer in accordance with Seller foundation drawings. Buyer will clear the installation site and remove all obstructions, and make all necessary building alterations, including, without limitation, cut and repair any floor, wall or roof opening, in accordance with drawings and information provided by Seller to Buyer.

(b) All piping and wiring necessary for the operation of goods is to be provided, paid for and installed by Buyer unless otherwise stipulated by contract.

(c) Buyer will furnish, without charge, electric current, compressed air, water, light, heat and toilet facilities as required by Seller including, without limitation, as may be needed for installation work, and fire protection of the goods. Seller is to have the use of any elevator or crane service available on the Buyer's premises, without charge, for the handling of material during the installation.

(d) Upon arrival of the goods, Buyer will provide safe, dry, inside storage for the goods. Goods exposed to the weather or stored in the open under tarpaulin or plastic may require reconditioning and such reconditioning will be at the expense of the Buyer. In addition, Buyer will unload all goods and material and cart and store such goods and material within a reasonable distance of the site of installation of the goods. Buyer shall be responsible for safekeeping of such goods and

material including, without limitation, providing watchmen service or other theft protection services.

14. **Safety Features.** Buyer shall install and operate the goods properly and according to Seller's operating instructions and shall not remove or change any safety device, warning or operating instructions that Seller placed on the goods.

15. **Components of Another Product.** If any of the goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer or for a third party, then Buyer shall (a) obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (b) cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (c) place on the product all safety devices and warnings, and furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.

16. **Resale.** On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent that *Paragraphs 8 and 9* above limit Buyer's rights and remedies.

17. **Independent Contractor.** Seller is an independent contractor under this Contract. Nothing in this Contract shall be deemed to make Seller or its employees or agents an employer, employee, partner, or joint venturer of Buyer.

18. **Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller creates or develops in the course of Seller's design, development or manufacture of the goods or performance of the services and all drawings and specifications that Seller provides to Buyer ("**Intellectual Property**") shall be Seller's sole property, and Buyer assigns, and agrees to award, to Seller all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller's business, operations, or activities, except to the extent necessary for Buyer to use the goods or services.

19. **Cancellation.**

(a) Buyer does not have any right to cancel its agreement to buy the goods or services from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts that Seller determines) for (i) the realizable value to Seller of any standard components that Seller purchased or ordered before cancellation, (ii) the realizable scrap value to Seller of the remaining material and tooling that Seller purchased, fabricated or ordered before cancellation and (iii) any direct labor costs that Seller saved by reason of the cancellation.

(b) If Buyer fails to make a payment when due or repudiates or in any other way breaches any of the terms or conditions hereof, Seller shall have all rights and remedies under the Uniform Commercial Code including, but not by way of limitation, the right to recover as damages the price as stated herein, plus all other direct, indirect, special, incidental and consequential damages.

20. **Indemnity.** To the fullest extent permitted by law Buyer shall indemnify and hold harmless Seller including its agents, officers and employees with respect to all damages, losses, claims and expenses, including consequential and incidental damages and attorney fees, that Seller incurs as a result of (a) Buyer's breach of any of Buyer's obligations under these Terms, (b) any claimed unfair competition or patent, trademark or copyright infringement or any other claim that results from

Seller's manufacture of the goods, or performance of the services, to Buyer's specifications, (c) Buyer's modification of any of the goods or (d) the incorporation or installation of any of the goods in a product that is manufactured or assembled by or for Buyer, (e) claims arising out of or resulting from loss of production, equipment damage, property damage or personal injury caused by improperly trained personnel, misuse of the machinery and/or disregard of or non-compliance with Seller's safety recommendations or instructions.

21. **Seller's Rights.** Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right.

22. **Time For Bringing Action.** Any action that Buyer brings against Seller for breach of this Contract or for any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery or the services must be brought within one year after the cause of action accrues.

23. **Governing Law and Language.** This Contract between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. Either party may bring any action that arises out of or relates to this Contract in any federal or state court in Kent County, Michigan that has jurisdiction of the subject matter.

24. **Complete Agreement; Amendment.** The terms on Seller's quotation and acknowledgment and these standard Terms contain the entire agreement between Buyer and Seller. Any change in this Contract must be in writing signed by an authorized officer of Seller.