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TERMS AND CONDITIONS OF SALE

Terms and Conditions of Sale:

General Terms: All sales subject exclusively to J&J Machine, Inc. (“J&J”) terms and conditions of sale listed herein. Delivery terms: F.O.B. J&J Machine, Elk River, Minnesota. Customer shall pay all federal, State and other governmental taxes (including without limitation sales, use and similar taxes), and all other fees, charges and duties relating to the sales.

Limited Warranty: J&J makes no warranty except that the Products conform to the specifications and drawings referenced in the Certificate of Conformance at the time of manufacture (“Limited Warranty”). J&J MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Indemnification: Upon Customer’s installation, use, manufacture, or performance of any other operation upon or involving the products and services listed herein, or upon delivery to any third party, Customer assumes all liability for, and agrees to indemnify J&J against, any and all Customer and third-party claims, losses and damages relating to, or arising from, the products and services (“Customer’s Indemnity”).

Remedy: Subject to Customer’s Indemnity, in the event of a breach of J&J’s Limited Warranty, J&J’s exclusive obligation and remedy shall be as follows: (a) that J&J repair or replace the defective products or services without charge; OR (b) that J&J credit the purchase price of the defective products or services to future Customer orders; OR (c) that J&J refund the purchase price to Customer, which alternative remedy (a, b or c) shall be selected by J&J, in J&J’s discretion. IN NO EVENT SHALL J&J BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CLAIM, LOSS OR DAMAGE IN EXCESS OF THE PURCHASE PRICE OF THE DEFECTIVE PRODUCTS OR SERVICES, OR FOR ANY CLAIMS FOR DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, PENALTIES, COSTS OF RECALL, OR ATTORNEY FEES (COLLECTIVELY, “DAMAGES LIMITATIONS”). CUSTOMER AGREES TO INDEMNIFY AND HOLD J&J HARMLESS FROM AND AGAINST ALL CUSTOMER AND THIRD PARTY CLAIMS, LOSSES AND DAMAGES FOR WHICH J&J IS NOT LIABLE UNDER THE DAMAGES LIMITATIONS. J&J and Customer, and each of them, on behalf of themselves and their respective insurance carriers, waive and release one another, and each other’s insurance carriers, from all claims that either party has, or may claim to have, against the other, if all or any part of such claim is covered or paid by either Party’s insurance carrier. This waiver of subrogation governs all claims and is subject to the Limited Warranty and other terms set forth herein. J&J is not responsible for Customer-supplied goods (material, components, assemblies, etc.) that are non-conforming while in J&J’s possession including non-conformances created during handling, development, set-up, production, outside services, inspection, or when performing any services.