

# General Terms and Conditions of Sale and Delivery for BUHLMANN North America LP

## **I. Definitions**

For purposes hereof: (i) "Company" means Buhlmann North America LP, a limited partnership organized under the laws of Delaware; (ii) "Customer" means the individual or entity whose name appears on the face of the Order Confirmation; (iii) "Products" means the products, parts and other goods described on the face of the Order Confirmation; and (iv) "Order Confirmation" means Company's sales order or invoice.

## **II. Conclusion of Contract, Condition of the Goods**

Customer shall pay to Company the amount listed on the Order Confirmation in the manner and in accordance with the terms provided on the face of the Order Confirmation. Any and all taxes imposed by federal, state or other governmental authorities on the sale, purchase, shipment, storage, use or consumption of the Products shall be paid or reimbursed by Customer in addition to the amount listed (and whether or not listed) on the Order Confirmation. Amounts listed on the Order Confirmation shall be exclusive of freight charges, unless otherwise specified, and shall be due within thirty (30) days from the date of shipment of the Products. If Customer fails to pay any amount due hereunder within 10 days from the written notice thereof, Company may, in its sole discretion, without prejudice to any other remedy, do any one or more of the following: (i) postpone shipments, (ii) alter payment terms, (iii) terminate shipments, and (iv) charge interest on all overdue amounts at the rate of 1.5% per month compounded monthly (or such lesser rate as is required by applicable law). In addition, Customer shall pay all of Company's costs and expenses, including reasonable attorneys' fees, of collecting any amount not paid when due hereunder. Unless otherwise specified herein, delivery terms shall be EXW Shipping Point, Incoterms 2020. The Products may be delivered in part or all at one time as determined by Company. Company will use reasonable diligence to meet the scheduled shipment dates provided herein, which are estimates and not guarantees of when the Products will actually be shipped. Customer's acceptance of delivery shall constitute a waiver of any claim of damage for delay. Upon delivery of the Products to a carrier, the Products shall become the property of Customer, subject to a reservation of a security interest herein granted to Company, and any losses or damage thereto not caused by gross negligence of Company shall be borne by Customer. Customer shall obtain appropriate risk insurance for the Products which shall include Company as a named insured, or which shall otherwise recognize Company's interest. The title of ownership passes to the Customer with payment of the goods.

## **III. Security for Payment**

Customer grants to Company a purchase money security interest in the Products to secure the payment of the purchase price of the Products and all other amounts due to Company from Customer. Customer agrees to execute and deliver to Company such security agreements, financing statements and other documents as Company may reasonably require to perfect and preserve such security interest.

## **IV. Integration of Products**

Company is not responsible for the satisfactory operation of the Products in conjunction with other products, nor for any losses which may occur as a result of a failure of the Products to operate in conjunction with other products.

## **V. Warranty**

Unless otherwise stated herein, Company warrants that all Products shall materially conform with the specifications set forth on the face of the Order Confirmation (the "Warranty") for a period of twelve (12) months from the date of shipment (the "Warranty Period"). The Customer shall carefully inspect the goods and documentation and give notice of any apparent defect in writing immediately, but in no event later than seven (7) days from the date of shipment. If a notification about apparent defects or non-conformity is not made, or is made later than seven (7) days from the date of shipment, the Customer may not base any claim on such defects. Company makes no warranty with respect to any Products not delivered

by Company. Claims pursuant to this Warranty must be made during the Warranty Period and shall refer to latent defects. If any of the Products fails to comply with the Warranty, Customer shall promptly notify Company of such failure, which notice must be received by Company during seven (7) days after discovery of any defect or non-conformity, and Company shall, at its option, repair or replace such non-conforming or defective Products within a reasonable grace period set by Customer, and such repair or replacement performed by Company shall constitute Customer's sole remedy. The Warranty does not cover damage from external causes, such as accident, abuse, misuse, service not performed or not authorized by Company, usage not in accordance with standards prescribed by Company or any other manufacturer of the Products or any federal, state or local law, rule or regulation, normal wear and tear, or use of parts or components not supplied or intended for use with the Products. The Warranty shall be null and void as of the date of such external cause. The Warranty shall terminate if Customer assigns any of its rights hereunder to any other party without first obtaining the written consent of Company.

**THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY FOR THE PRODUCTS AND COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, PERFORMANCE, SUITABILITY AND NON-INFRINGEMENT.**

## **VI. Remedies upon Breach**

If Customer breaches this contract, Company shall be entitled, in addition to any other remedy at law or equity, to recover all costs and expenses incurred by Company in connection therewith, including, without limitation, Company's reasonable attorneys' fees, court costs, costs of labor, overhead, costs of materials, and any charges imposed on Company by its suppliers or subcontractors. If Company breaches this contract, Customer's exclusive remedy shall be to terminate this contract by written notice thereof to Company, and to receive a refund for the Order Confirmation amount, if previously paid, for any Products not yet shipped as of the date of such termination. Notwithstanding such termination of this contract, however, Customer shall immediately pay Company the Order Confirmation amount for any Products that have been shipped and all other outstanding invoices, if not previously paid, and shall be entitled to receive Products from Company upon Company's receipt of such payment.

## **VII. Cancellations**

Cancellation of this contract must be in writing signed by Customer and Company. Such cancellation will be deemed to occur on the date of the later party's signature of the notice of cancellation. Upon such cancellation initiated by Customer, Customer shall pay Company immediately all costs and expenses incurred by Company in connection with Customer's cancellation of this contract, including, without limitation, Company's reasonable attorneys' fees, costs of labor, overhead, costs of materials, and any charges imposed upon Company by its suppliers or subcontractors. Notwithstanding the foregoing, Company may cancel this contract, thereby terminating all warranties hereunder, and suspend any further deliveries hereunder without any liability to Customer, and, if the Products have been delivered but not paid for, the price therefore shall become immediately due and payable despite any other agreement to the contrary, if: (i) any proceedings in bankruptcy, insolvency, receivership or liquidation are taken against Customer; (ii) Customer makes an assignment for the benefit of creditors or commits an act of bankruptcy or insolvency; (iii) the Products are seized under any legal process or confiscated; or (iv) Company in good faith believes that the ability of Customer to pay or perform any provision of this contract is impaired, or that the Products are in danger of being lost, or that any of the events mentioned above is about to occur.

## **VIII. Excuse for Non-Performance (Force Majeure)**

## General Terms and Conditions of Sale and Delivery for BUHLMANN North America LP

A Force Majeure Event means any act or event or circumstance which itself and/or its consequences are unforeseeable, unavoidable, beyond a party's reasonable control and which prevents or delays the affected party's performance of its contractual obligations. This shall include, but not be limited to the impediments stipulated in paragraph 3 of the ICC Force Majeure Clause 2020, as well as expressly cyberattacks, shortage in energy supply, currency and trade restrictions, embargo, sanction all events in connection with SARS-CoV-2 and the Russian attack against Ukraine as well as countermeasures directed against it (in particular SANCTIONS). The affected party shall notify the other party of the Force Majeure Event within reasonable time after gaining knowledge of the circumstance. In case of Force Majeure Event the non-performing party is, from the time the Force Majeure Event causes the impediment to perform, relieved from (i) its duty to perform its obligations under the contract, (ii) any liability in damages or any other contractual remedy for breach of contract. This shall also be the case if engaged sub-suppliers are affected by an event of Force Majeure. In that event the affected Party shall only be obliged to recourse to alternate and/or additional sources if the services, equipment and/or materials are available at equivalent price and corresponding other conditions. If the event of Force Majeure continues in effect for more than 180 days, the parties shall enter into discussions with a view to alleviating the effects of the event of Force Majeure and/or to agreeing upon alternative arrangements as may be fair and reasonable to both parties.

### **IX. Limitation on Damages; Indemnity**

Company's total liability for the Products in each Order Confirmation shall not exceed the amount actually paid, as of the date of the claim, to Company by Customer pursuant to such Order Confirmation. **EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF THE FOLLOWING, COMPANY SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUES, INCOME OR SAVINGS, LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION, OR BUSINESS INTERRUPTION OR DOWNTIME. COMPANY DISCLAIMS ALL LIABILITY RESULTING FROM ERRORS IN CONTENT PROVIDED BY CUSTOMER. THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER FOR COMMERCIAL OR PERSONAL INJURY, AND WHETHER BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE.** Customer agrees that on the demand of Company it shall hold harmless and indemnify Company from and against any liability, obligation, loss, damage, fees, fine, penalty, action, claim, judgment, settlement, proceeding, cost, expense and disbursement of any kind or nature whatsoever, including all reasonable attorney's fees, costs and expenses of defense, appeal, and settlement of any suits, actions or proceedings instituted against Company and all costs of investigation in connection therewith (hereinafter collectively referred to as "Liabilities") that may be imposed on, incurred by, or asserted against Company by a third party arising out of the transactions contemplated by the Order Confirmation. Notwithstanding the foregoing, Customer shall not be liable to Company for any portion of such Liabilities that resulted from Company's fraud, bad faith, or willful misconduct.

### **X. Governing Law, Arbitration**

This contract shall be governed by the laws of the state of Texas, without reference to its conflict of laws provisions. Any controversy, claim or dispute arising out of or relating to this contract (including, without limitation, questions concerning whether a matter is required to be submitted to arbitration under this Section) shall be determined by binding arbitration; provided, however, that any party that wishes to institute arbitration proceedings must first notify in writing the other party of its intent to initiate such proceedings, and demand for arbitration may not be made until after the date twenty-one (21) days from the date such notice is sent. All arbitration proceedings between the parties hereto shall be administered by the office of the American Arbitration Association ("AAA") in Houston, Texas, and all hearings shall be held in Houston, Texas. All such arbitration proceedings shall be conducted in accordance with the commercial

arbitration rules of the AAA in force as of the date demand for arbitration is made. The parties agree to abide and be bound by all decisions and awards rendered by the arbitrator. Judgment upon such decisions and awards may be entered in any court having jurisdiction.

### **XI. Miscellaneous**

1. The terms and conditions stated herein constitute a contract between Customer and Company and together with the Order Confirmation constitute the complete and exclusive statement of the terms and conditions of the sale and delivery of the Products. There are no other promises, conditions, understandings, representations or warranties of any kind with respect to the subject matter hereof.
2. This contract may be modified only by a writing signed by Company and Customer.
3. The failure of Company to enforce any right hereunder will not be construed as a waiver of its right to enforce any right in the future.
4. Any provision of this contract which is, or is deemed to be, unenforceable in any jurisdiction shall be severable from this contract in that jurisdiction without in any way invalidating the remaining provisions of this contract, and that unenforceability shall not make that provision unenforceable in any other jurisdiction.
5. The rights which accrue to Company by virtue of this contract shall inure to the benefit of its successors and assigns.
6. All requests, instructions and notices from one party to the other must be in writing and may be given via certified mail or facsimile transmission to the address of the parties shown on the face of the Order Confirmation.
7. Provisions herein which by their nature should apply beyond their terms will remain in force after any termination of this contract, including but not limited to the following: Section 2, Section 5, Section 6, Section 8, Section 9, and this Section 10.
8. Company reserves the right to update these terms and conditions at any time; however, Customer's rights and obligations shall be as provided in the version of the terms and conditions in effect as of the relevant Order Confirmation.

### **XII. Export Control**

The Buyer undertakes to comply with all applicable national, supranational and international export control regulations. The Buyer warrants that the delivered goods, including replicas thereof, will only be used and will be passed on to third parties in compliance with all applicable export control regulations.

### **XIII. Compliance**

1. The Buyer confirms that it has taken notice of our Code of Conduct available at our website or directly accessible via <https://buhlmann-group.com/downloads/#code-of-conduct> and undertakes to observe and comply with the principles set out in the Code of Conduct in the performance of its activities and to ensure compliance with them within its supply chain.
2. If the Buyer violates its obligations under Clauses XIII, 1 we shall have the right to terminate the contract without notice.

BUHLMANN NORTH AMERICA LP