



**ENTIRE AGREEMENT:** Every sale of goods or performance of services by Bernard J. Mulcahy Co., Inc. ("Mulcahy") is subject to these terms and conditions. No purchase order shall be binding until acknowledged in writing by Mulcahy incorporating these terms as though stated therein. The acknowledgement or other order document containing these Terms and Conditions ("Agreement") contains the entire agreement between the parties and supersedes all prior statements of any kind by or between the parties. If the Agreement is construed to be an offer, the offer expressly limits acceptance by Customer to these terms and notice of objection to any different or additional terms is hereby given. If the Agreement is construed to be an acceptance of an offer, this acceptance is expressly conditioned upon Customer's assent to any different or additional terms contained herein. If the Agreement is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. Mulcahy takes exception to and hereby objects to all hold harmless and indemnity provisions, either express or implied, set forth in Customer's order, including, but not limited to, those that attempt to make Mulcahy responsible for Customer's negligence. Mulcahy also objects specifically to any provisions in Customer's order that (a) attempt to impose warranties other than as set out herein, (b) attempt to prohibit disclaimers of warranties, (c) attempt to preclude limitations on Customer's remedies, or (d) attempt to impose damages resulting from performance failures. Acceptance of goods or services shall constitute conclusive acceptance of these terms and conditions.

**MODIFICATION:** None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered, including by course of dealing, except by a written instrument specifically referencing the affected provision signed by an authorized representative of Mulcahy and an authorized representative of Customer. The failure or delay of either party in the enforcement of the rights detailed herein shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel either at equity or at law. Either such party may exercise its rights hereunder despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arose.

**ASSIGNMENT:** Customer may not assign or transfer the Agreement, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of Mulcahy which may be withheld in Mulcahy's absolute and sole discretion. Any unauthorized assignment or transfer of Customer's rights or obligations hereunder shall be null and void. Mulcahy may assign the Agreement, or all or any part of its rights hereunder, in its sole discretion and without notice to or consent from Customer.

**TERMS OF PAYMENT:** Unless otherwise agreed by Mulcahy in writing, terms will normally be due upon order placement. Payments made by credit or debit card will be subject to convenience or other fees in accordance with applicable law. Orders are subject to final approval by Mulcahy, which may require full or partial advancement. If Customer delays order processing, partial payment based on the portion of the order completed shall then be paid. Pro rata payments shall be due as shipments are made. In the event Customer delays shipment, full payment shall be due thirty days from the date Mulcahy could have otherwise shipped the goods. Storage shall be at Customer's risk and charges therefor shall be paid before shipment. If Customer does not pay on time, Mulcahy reserves the right to charge Customer interest on the unpaid balance until paid at the lower of 0.625% per month or the highest rate allowed by law. Mulcahy reserves the right to process an electronic ACH debit to Customer's bank account in the event Customer presents Mulcahy with a check returned for non-sufficient funds.

**CANCELLATION/CHANGE:** Orders may only be cancelled with Mulcahy's written consent, which may be withheld in Mulcahy's sole and absolute discretion. If Mulcahy consents to cancel an order, Customer shall pay for every loss, cost, or damage which Mulcahy may suffer as a result and an appropriate cancellation charge, including, but not limited to, labor and service costs, shipping costs, and restocking fees determined by Mulcahy. Additional costs associated with changes requested by Customer, after acceptance of order, may be charged to Customer. Verbal changes are not accepted by Mulcahy.

**QUOTATIONS AND PRICES:** All prices quoted are estimates only and are subject to change without notice. All quotations are based on cash or check payment in United States dollars. Payment by credit or debit card will result in additional charges in accordance with applicable law. All quotations are subject to modification for any changes in tariffs, regulatory or other governmental charges, or pricing changes outside of the exclusive control of Mulcahy. Unless otherwise rescinded, altered, revoked, or otherwise modified earlier, all quotations expire at noon central time on the 20th calendar day after date of quotation. Mulcahy reserves the right to correct any clerical or other errors and shall not be bound by such errors. Shipping charges, including freight-in and -out and Mulcahy's standard handling charge in effect at the time, are prepaid and added to invoices, unless otherwise agreed to in writing. Note: Customer is responsible for freight-in on "freight collect" shipments. Total price for services will be calculated based on Mulcahy's standard service rates in effect at the time the services are performed. All prices and/or discounts are based on receiving an order for the quantities specified. Any change in quantity may result in a change in price and/or discount.

**DELIVERY AND SCHEDULING:** Shipping and scheduling dates are not guaranteed. Reasonable efforts will be made to meet schedules for shipment of goods or completion of services stated herein, but Mulcahy shall not be responsible for any delay or failure to do so nor will Mulcahy be responsible for any costs or damages of Customer as a result of any such failure. In addition, Mulcahy shall not be responsible for failures due to causes beyond its control, including, but not limited to, acts of God or of the public enemy, acts of any governmental authority or any government regulations, fires, war, riots, terrorist acts, accidents, casualty, failures of Mulcahy's vendors or suppliers, delays in transportation, unavailability or shortages of electricity or other utilities, floods, unusually severe weather, epidemics and pandemics, quarantine restrictions, strikes, labor disputes or shortages of labor, freight embargoes, inability to secure necessary parts and materials, and/or other shortages.

**SERVICE TIME:** Unless otherwise specified in writing by Mulcahy, all consulting, instruction, training, and assistance rates are billed in 2-hour increments with fieldwork billed in 8-hour increments. Time spent traveling to and from the service location is billed at half the applicable rate, billed in one hour increments.

**SERVICE AGREEMENT:** All services provided under any Service Agreement are subject to the Service Agreement and these Terms and Conditions to the extent not expressly modified by the Service Agreement.

**RETURNS:** No credit will be given for returns except by prior approval of Mulcahy, which Mulcahy may withhold in its absolute discretion. Customer must obtain a Return Goods Authorization (RGA) number from Mulcahy before any product can be returned. The RGA number must be identified on the outside of all packaging. Special materials or equipment may not be returned. If approved for return, returned equipment shall be in new, re-sellable, never installed conditioned. A minimum 25% restocking charge will be applied to all returns and deducted from any credit to be issued upon inspection of product with actual charges to be determined by Mulcahy in its sole discretion upon receipt of the returned goods.

**TITLE AND RISK OF LOSS:** Unless otherwise specified in writing by Mulcahy, delivery points shall be Ex-Works Mulcahy's loading dock (or the manufacturer's loading dock if shipped direct from the manufacturer) and the title to the goods and risk of loss passes to Customer at that point. Customer must state method of shipment preferred or Mulcahy will determine method. Customer assumes the risk of damage or loss in transit. If Customer gives a clean receipt for damaged goods or for shipment upon which there are shortages, Mulcahy is not responsible for any shortages. Claims for goods delivered short, damaged or defective (not due to fault of carrier) shall be filed with Mulcahy within ten days from date of invoice or shall be waived. Customer's claims for shortages shall detail shipment weights and method of counting the goods. Claims for goods delivered short, damaged or defective as a result of the fault of the carrier will be handled directly with the carrier.

**EXPORT SALES:** It is Customer's sole responsibility to comply with all United States export control rules and regulations. Mulcahy cannot be named as shipper or exporter of record for such goods. Some items sold may be controlled by the U.S. Government and require authorization for export to the country of ultimate destination or for use by the ultimate consignee or end-user(s). These items may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

**GOVERNMENT CONTRACTS:** If Customer purchases goods for sale to any U.S. government, state or local government agency, Customer is responsible to notify Mulcahy of all government procurement conditions applicable to the sale when Customer requests Mulcahy's quotation. Mulcahy will review the conditions and advise Customer of Mulcahy's ability to comply. If any government action should place or contain a limitation on the price provided for in

the Agreement such that it would be illegal or against public or government policy for Mulcahy to charge, assess or receive the full amount or to increase such prices as determined by the Agreement, then Mulcahy shall have the option to (1) continue to perform under the Agreement subject to such adjustments in prices that Mulcahy may deem necessary to comply with such government action, (2) revise the Agreement, subject to Customer's approval which shall not be unreasonably withheld, in order to most nearly accomplish the original intent of the Agreement, or (3) terminate performance of the affected portions of the Agreement without liability for any damages.

**TAXES:** Customer shall pay any present or future federal, state, local or other applicable tax. If not taxable, current exemption certificate must be submitted with purchase order.

**WARRANTY DISCLAIMER:** With respect to goods manufactured by third parties, Mulcahy hereby assigns the [original](#) manufacturers' warranties and remedies, to the extent assignable.

MULCAHY DISCLAIMS ANY AND ALL WARRANTIES AND REMEDIES WHETHER EXPRESS OR IMPLIED, ORAL OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE OR NON-INFRINGEMENT AND ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN CONTRACT OR TORT, INCLUDING, WITHOUT LIMITATION, PRODUCT LIABILITY BASED UPON STRICT LIABILITY AND NEGLIGENCE. ALL SERVICES AND PRODUCTS ARE PROVIDED AS IS AND WITH ALL FAULTS.

**LIMITATION OF LIABILITIES:** MULCAHY WILL NOT BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, SPECIAL, COVER, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, OR BUSINESS) RESULTING FROM OR IN ANY WAY RELATED TO THE GOODS OR SERVICES PURCHASED/SOLD HEREUNDER, THE AGREEMENT, OR TERMINATION OF THE AGREEMENT. THIS LIMITATION APPLIES REGARDLESS OF WHETHER THE DAMAGES OR OTHER RELIEF SOUGHT ARE BASED IN CONTRACT OR TORT, INCLUDING BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY. FURTHER, NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT TO THE CONTRARY, MULCAHY'S TOTAL AGGREGATE LIABILITY HEREUNDER SHALL BE LIMITED TO THE PURCHASE PRICE OF THE GOODS OR SERVICES GIVING RISE TO THE CLAIM. THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF MULCAHY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY ESSENTIAL PURPOSE THEREOF, AND EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE, OR STRICT LIABILITY OF THE PARTY WHOSE LIABILITY IS DISCLAIMED OR LIMITED.

**WARNINGS:** The improper installation or application of goods; their use with improper wiring, piping or ventilation; improper system design or engineering; inadequate inspection or testing; the lack of regular careful maintenance of both goods and any equipment in connection with which goods are used; the employment of insufficient or unqualified personnel; the lack of careful supervision, proper warnings, operating instructions, and safety precautions; the exposure of goods to excessive heat, moisture, dust, dirt, corrosion, or any other deleterious condition, each constitutes a hazard which can result in loss of life, serious personal injury, heavy property or business damage, and Customer shall itself take and require others to take all reasonable measures to avoid each such hazard. Customer agrees to notify its customers or users of good(s), as the case may be, of these warnings, and to deliver to its customers or users of good(s) all written warnings provided with each good by Mulcahy. Customer assumes all risk and liability resulting from goods delivered hereunder, whether used singly or in combination with other products. Unless otherwise agreed to by Mulcahy in writing, goods sold in connection with the services provided hereunder are not intended for use in connection with "safety-related" applications within any nuclear facility or any other hazardous activity such as aircraft, space exploration or other critical applications where failure of a single component could cause substantial harm to persons or property. Mulcahy disclaims any and all liability if standard commercial products are used in any such applications.

**INDEMNITY:** In the event that any person, firm or corporation asserts any claim against Mulcahy arising out of any act or omission of Customer, or arising due to Customer's failure to notify of warnings or deliver warnings as set forth above, and provided that any such claim does not arise out of Mulcahy's gross negligence or any actionable defect in Mulcahy's product(s), then in either of such events Customer agrees to indemnify and save Mulcahy harmless from and against all liability, loss, cost and expense arising out of such claim.

In the event of any loss, injury or damage, Customer shall not itself, nor permit others to, dismantle, test, or examine any of the goods without giving Mulcahy sufficient advance notice to be present and Customer shall allow such presence.

**SEVERABILITY:** If any one or more of the provisions of the Agreement shall for any reason be invalid, illegal, or unenforceable, such circumstance shall not affect any other provision of the Agreement and the Agreement shall continue in full force and effect and be construed as if such provision, to the extent that it is invalid, illegal, or unenforceable, had never been contained herein or therein.

**FORCE MAJEURE:** Always subject to the applicable law, Mulcahy shall not be liable in damages for failure to comply with its obligations to the extent that its performance is prevented by causes beyond its reasonable control including, but not limited to, acts of God or of the public enemy, acts of any governmental authority or any government regulations, fires, war, riots, terrorist acts, accidents, casualty, failures of Mulcahy's vendors or suppliers, delays in transportation, unavailability or shortages of electricity or other utilities, floods, unusually severe weather, epidemics and pandemics, quarantine restrictions, strikes, labor disputes or shortages of labor, freight embargoes, inability to secure necessary parts and materials, and/or other shortages.

**CONTROLLING LAW:** The Agreement and all disputes thereunder, will be governed by the laws of the State of Minnesota, United States of America, without regard to Minnesota's choice of law principles. The exclusive forum and venue for any legal action arising out of or related to the Agreement shall be the United States District Court for the District of Minnesota, and Customer submits to the personal jurisdiction of that court. If subject matter jurisdiction (including diversity jurisdiction) does not exist in the United States District Court for the District of Minnesota, then the exclusive forum and venue for any such action shall be the courts of the State of Minnesota located in Dakota County, and Customer submits to the personal jurisdiction of those courts.

dated 01/18/2024