

**BURNHAM INSULATION SALES, INC. MASTER TERMS AND CONDITIONS** v 2018\_1:

THESE TERMS AND CONDITIONS ARE ENFORCEABLE WITHOUT CUSTOMER SIGNATURE. You, the customer and purchaser (the "Customer," "Buyer," or "You") of goods (the "Goods") and/or services (the "Services") supplied, leased, consigned, procured, sold, or otherwise made available to You by Burnham Insulation Sales, Inc. ("Seller" or "Burnham"), hereby agree to be legally bound by these Terms and Conditions, as such agreement is a condition precedent to Seller's willingness to engage in business with you. Acceptance by Seller of Buyer's offer to purchase Goods and/or Services is expressly limited to, and expressly made conditional on, Buyer's acceptance to these Terms and Conditions, notwithstanding any inconsistent term proposed by Customer or any inconsistent term contained in Customer's proposal, offer, or form. Seller objects to any different or additional terms and to the extent any discrepancy exists between any Buyer term and any Seller term, the parties hereto acknowledge that the Seller's term shall control.

**1.) OFFER AND ACCEPTANCE; COMPLETE AGREEMENT:** These Terms and Conditions, together with any applicable addendums hereto (these "Terms and Conditions"), shall govern the relationship between Buyer and Seller, and all subsequent/other agreements, purchase orders, requests, or contracts (the "Other Documents") shall be subject to the Terms and Conditions, as Burnham's agreement to accept and perform is contingent upon Customer's unequivocal and absolute acceptance of the Terms and Conditions. The Other Documents, subject to these Terms and Conditions, shall constitute the complete agreement between the parties and may not be altered or modified except in writing, duly executed by each party. In the event of a battle of the forms, wherein Buyer's contract or form conflicts with these Terms and Conditions, the Buyer and Seller acknowledge that the Seller's Terms and Conditions control. The parties agree there are no prior agreements between the parties, oral or written, with respect to the Goods or Services sold hereunder (including any made or implied from past dealings) except as expressed herein and in the Other Documents. No terms and conditions stated in or attached to Buyer's communications to Seller, including, but not limited to, Buyer's purchase orders or cover correspondence, are applicable to these Terms and Conditions in any way, and are not to be considered Buyer's exceptions to the provisions of these Terms and Conditions – all such Buyer language is hereby rejected. Trade custom, trade usage and past performance are superseded by these Terms and Conditions and shall not be used to interpret these Terms and Conditions. The parties hereby acknowledge and agree that Buyer's order constitutes an offer by Buyer to purchase Goods or Services from Seller. The Seller's acceptance incorporates these terms and conditions in each instance. These terms and conditions override all others, and supersede, and assume precedence over all others, including but not limited to Buyer's terms and conditions and any other prior executed contracts between Seller and Buyer. It is further understood by Buyer that in each and every instance when Seller delivers Goods or Services to Buyer, regardless of where delivery occurs, Buyer's receipt of the Goods and/or Services shall constitute an unconditional reaffirmation of the Terms and Conditions. **For avoidance of doubt, purchase orders issued by Buyer to Seller, either electronically, in writing, or verbally, are subject to the terms set forth herein.**

**2.) PRICE:** Buyer's orders shall be fulfilled by Seller in its discretion, subject to Seller's availability, at Seller's prices in effect on the shipment date.

**3.) TAXES:** Any tax, excise, duties or governmental charge, whether local, Federal or foreign, imposed upon the production, sale, export, import, use or transportation of, or value added to, any material sold hereunder which Seller may be required to pay, shall be paid by Buyer to Seller in addition to the purchase price upon Seller's demand. If Buyer operates in a foreign country that requires withholding of taxes from any disbursements made hereunder, Buyer shall be responsible for such taxes and Buyer may not withhold any amounts from any disbursements made to Seller. Buyer shall provide Seller, upon request, with completed exemption certificates for any tax from which Buyer claims exemption. Should Buyer claim, imply, or otherwise indicate that a purchase is tax exempt, Buyer is solely responsible for any applicable unpaid taxes, duties, fees, and penalties as a result of misrepresentation, regardless of intent. Failure of Buyer to produce the requested tax exemption documentation to Seller, shall result in Buyer assuming all financial and legal responsibility for the payment of any taxes owed as a result of any misrepresentation of tax exempt status for a project, regardless of intent, as well as any costs and damages incurred by the Seller, including, without limitation, attorney's fees as they are incurred. In all cases, Buyer is responsible for all applicable usage taxes not collected by the Seller. All Buyer obligations shall be paid on demand by Seller.

**4.) SHIPMENT AND DELIVERY:** All shipping information transmitted to Buyer, including shipping and delivery dates, represent only the best estimates of Seller and are in no way guaranteed. In the event that delays are encountered by Seller in obtaining equipment, materials and/or service, the shipping schedule will be extended as necessary to accommodate such delays. Seller shall not be liable for direct or consequential loss or damage due to any suspension or delay of shipment or delivery if such shipment or delay is attributable to causes beyond the reasonable control of Seller. All Goods shipped hereunder shall be shipped FCA (Incoterms 2010), and risk of loss and risk of delay in transit shall pass to Buyer upon acceptance of Goods by the carrier at the point of shipment, unless the parties otherwise agree in writing. Shipments of all Goods will be made only at the point specified by the parties or otherwise indicated by Seller for such Goods and Seller will select the origin of shipment and the carrier. The quantity of all bulk rail and truck shipments will be determined by Seller by outage tables with corrections for temperature or by weigh master's certificate, as appropriate, and Seller's quantity determination will govern. Buyer will promptly unload each shipment at its own risk and expense, including any demurrage or detention charges. If the Goods ordered are to be exported from the United States (US), the quoted shipping dates are subject to receipt of all export documents and authorizations. Regardless of ultimate destination, the prices quoted are based on packing for domestic shipment unless otherwise stated in writing. Seller reserves the right to choose the freight forwarder, carrier and/or broker.

**5.) COMPLIANCE WITH LAWS:** Buyer agrees to provide Seller in writing with the ultimate destination and identity of the end-user at the time the order is placed, if the Goods are to be exported outside of the United States. Buyer agrees to fully comply with all applicable United States laws and regulations, including without limitation the U.S. International Traffic in Arms Regulations, the U.S. Export Administration Regulations, all U.S. laws and regulations governing sanctions and embargos, including regulations promulgated by the Office of Foreign Asset Control ("OFAC") of the Treasury Department, and the U.S. Foreign Corrupt Practices Act (collectively, "Applicable Laws and Regulations"). Diversion contrary to U.S. law is prohibited and Buyer may not sell, transfer, assign or otherwise make the Goods and Services available to countries that are subject to US sanctions and embargos and persons that are on OFAC's Specially Designated Nationals list or other similar lists maintained by the Government of the United States. Buyer acknowledges and agrees that Buyer shall be responsible for all licenses and permits for export from the

United States and import into any foreign country into which it seeks to import the Goods. Seller shall not be, and shall not be deemed to be, the exporter or importer of record and is not responsible for compliance with importation requirements of any country to which the Goods are shipped.

**5.) FORCE MAJEURE:** Seller shall not be liable for its failure to make delivery, and Seller shall be excused for any delay in performance, due to acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, quarantine restrictions, mill conditions, strikes, differences with workmen, delays in transportation, shortages of cars, fuel, labor or materials, mechanical failure, production failures, or any other circumstances or causes beyond the reasonable control of Seller in the reasonable conduct of its business. In the event of such delay, the time of completion shall be extended by for a period of ninety (90) days; provided, however, that if the delay remains in effect past such ninety (90) day period Seller may terminate these Terms and Conditions at its discretion and without liability to Buyer. If delay is caused by the act or failure to act by Buyer, Seller shall be reimbursed for any costs it incurs as a direct result of such delay, including, without limitation, any attorney's fees as they are incurred.

**6.) INSPECTION AND CLAIMS:** Buyer shall inspect and test the Goods delivered hereunder for damage, defect or shortage immediately upon receipt, and shall notify Seller of any such damage, defect, or shortage within forty-eight (48) hours of receipt. All claims of any nature whatsoever, whether based on contract, negligence or other tort, strict liability, breach of warranty, operation of law, or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives written notice of such claims not later than forty-eight (48) hours after Buyer's receipt of the Goods with respect to which such claim is made.

**7.) LIMITED WARRANTY:** Buyer hereby agrees and acknowledges that it will look solely to the manufacturer of any Goods with respect to any alleged breach of such manufacturer's warranty. In the event that Buyer seeks any remedy from a manufacturer of the Goods for breach of such manufacturer's warranty, Buyer acknowledges and agrees that Seller is not responsible for reimbursement of disposal, labor or freight charges incurred to replace materials. If requested by Seller, materials for which a warranty claim is made will be returned to Seller - transportation prepaid by Buyer. Seller extends no warranty, express or implied, with respect to the Goods or the Services. **SELLER EXPRESSLY LIMITS ITS WARRANTY TO THE TERMS SET FORTH ABOVE AND HEREBY EXCLUDES ALL OTHER WARRANTIES EXPRESS OR IMPLIED, IN PARTICULAR EXCLUDING ANY AND ALL (A) WARRANTIES OF MERCHANTABILITY, (B) WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, (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. SELLER LIKEWISE LIMITS THE REMEDIES AVAILABLE TO THOSE SET FORTH IN THIS LIMITED WARRANTY. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR ANY LOSS OF INCOME, LOSS OF PROFITS OR ANY OTHER FORM OF CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES WHATSOEVER. IN NO EVENT SHALL THIS WARRANTY BE EXPANDED BY ANY ADVICE, EXPERIMENTATION OR OTHER PARTICIPATION WHICH SELLER MAY RENDER IN THE DESIGN OR DEVELOPMENT OF MATERIALS, TOOLS, MOLDS, PARTS, ETC., FOR BUYER'S USE OR FOR BUYER'S PRODUCTS, WHETHER RELATED TO FUNCTIONAL OR AESTHETIC PURPOSES. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.**

**8.) PATENTS:** In no case shall Seller be liable for any patent infringement.

**9.) ESTIMATES, RECOMMENDATIONS, AND TECHNICAL ASSISTANCE:** Technical assistance offered by Seller, including but not limited to quantity estimates, material selection, applications and installation techniques, calculations, and other forms, when offered by Seller or requested by Buyer, is to be understood by all parties to be provided as courtesy ONLY, may only reflect the ideas and experience of the Seller, and shall in no way represent an engineered or scientific solution, no matter how the information is presented, and any such suggestions or recommendations should be verified by the Buyer or their designated representative on their behalf. It is further agreed and acknowledged that Buyer is ultimately responsible for final selection and determination of quantities and materials and, further, that Buyer is responsible for order accuracy and the selection of all sizes, quantities, and material selections.

**10.) SAFETY AND HEALTH:** Seller shall, upon request, furnish to Buyer Material Safety Data Sheets (the "Data Sheets"), including warnings and safety and health information concerning the Goods and/or the containers for such Goods sold by Seller to Buyer. Placement of an order with Seller is Buyer's unconditional expressed acceptance of the safety of the materials as referenced on the Seller-delivered Data Sheets. At no time is Seller responsible for the accuracy or timeliness of any third party manufacturer's published safety data, current or otherwise. Buyer hereby agrees and acknowledges that Seller shall not be responsible for any tort claim related to the Goods, including but not limited to a mass tort claim related to the hazardous nature of the Goods, and Buyer covenants and agrees to seek no remedy from Seller with respect to such claims.

**11.) GOVERNING LAW:** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, and the parties hereto agree and consent to exclusive jurisdiction and venue in the state or federal courts in Pennsylvania without reference to conflicts of law principles and to any principles therein that would require the application of The United Nations Convention on Contracts for the International Sale of Goods ("CISG"). CISG shall not apply to this or any Other Document between the parties. Any legal suit, action or proceeding arising out of or relating to the purchase and sale of the Goods, the provision of the Services or these Terms and Conditions shall be commenced in a federal court in Pennsylvania or in state court in the County of Allegheny, Pennsylvania, and the appellate courts thereof, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. With respect to any litigation arising out of the purchase and sale of the Goods, the provision of the Services or these Terms and Conditions, the parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury and the prevailing party shall be entitled to recover its expenses, including reasonable attorney's fees, from the other party. The Buyer consents to the jurisdiction of the courts mentioned in this section, agree to accept service of process by mail, and hereby waive any jurisdiction or venue defenses otherwise available.

**12.) RETURNS/RESTOCKING:** All sales are final unless otherwise agreed upon between Buyer and Seller prior to sale. Excess Goods from large scale projects only, may be restocked for a negotiated amount prior to sale. An amount of not less than 35% of the transaction in which the restocked Goods were subject shall be paid by Buyer as a restocking fee for material returned in its full, unopened, original packaging. Seller, in its sole discretion, may determine when restocking is warranted. Seller reserves the right to deny returns of Goods for any reason at any time. In the event of a return or reclamation of Goods upon Buyer's default in any payment obligation to Seller, the parties acknowledge and agree that Seller shall be entitled to apply a 90% restocking fees to any such Goods.

**13.) PAYMENT:** Payment terms are upon demand at the time of purchase unless otherwise agreed upon. In the event of multiple transactions between Buyer and Seller, Buyer agrees that Seller may apply payments in its sole discretion to any then-outstanding obligation, notwithstanding any Buyer direction or notation stating otherwise.

**14.) CREDIT:** In the event that Seller extends credit to Buyer, Buyer shall pay all invoiced amounts due to Seller within thirty (30) days following Buyer's receipt of Seller's invoice. Seller may extend the time for payment, up to one-hundred eighty (180) days, in its sole discretion; provided that no extension of time for one payment shall be deemed an extension for any subsequent payments. Buyer hereby acknowledges and agrees that payment to Seller shall in no way be conditioned upon Buyer receiving funds from its customers. In the event Seller extends credit to Buyer, Buyer hereby grants to Seller a lien on, and security interest in, all of the right, title and interest of Buyer in, to and under the Goods, Buyer's accounts, equipment, and all proceeds thereon or therefrom, wherever located, and whether now existing or hereafter arising or acquired from time to time, until all amounts due from Buyer to Seller have been paid or satisfied. Buyer hereby authorizes Seller to file a financing statement to perfect the security interest and execute any documentation to effectuate the pledge and collateralization of its indebtedness to Seller. In the event of a default in any payment obligation of Buyer, Buyer hereby covenants and agrees to promptly reimburse Seller for all collections costs incurred by Seller in connection with such default (including, without limitation, attorney's fees as they are incurred), plus twenty-five percent (25%) of the then-outstanding debt. Buyer must inform Seller of any inaccuracies, discrepancies, or claims associated with invoices, monthly account statements or aged trial balances in writing within ten (10) days of receipt by Buyer. Failure to provide such notice of any claims, inaccuracies, or discrepancies within the above-stated time frame will result in an unconditional waiver of any such claim(s).

**15.) INTEREST:** Non-payment of outstanding balances by Buyer within the time frame set by Seller shall be subject to an interest rate equal to 3% compounded monthly interest or the maximum rate permitted by law, whichever is higher. Interest shall be deemed to accrue beginning on the day the Goods were delivered or the Services were first performed.

**16.) SEVERABILITY; WAIVER:** In the event any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions hereof which shall remain in full force and effect. No waiver of any provision hereof shall constitute a waiver of any other provision, and no single waiver shall be held to constitute a continuing waiver or a subsequent waiver.

**17.) DISTRIBUTION:** Seller reserves the right, in its sole discretion and without incurring any obligation or liability to Buyer, to discontinue the distribution of any Goods sold pursuant to these Terms and Conditions.

**18.) INDEMNITY:** Buyer agrees to defend, indemnify and hold Seller (and its agents, representatives, employees, officers, directors, shareholders, related companies, successors and assigns, and customers) harmless from any and all claims, demands, actions (whether administrative, civil, commercial or criminal) damages, and liabilities (including attorney's fees and consequential and incidental damages) arising out of (a) any injury (including death) to any person or damage to any property in any way connected with any act or omission of Buyer, its agents, employees, or subcontractors, and (b) any violation of Applicable Laws and Regulations by Buyer and its affiliates.

**19.) NON-DISPARAGEMENT:** Buyer hereby agrees and covenants that it shall not, and shall not permit any of its businesses, employees, officers, or directors to, at any time make, publish, or communicate to any person or entity or in any public forum any defamatory, maliciously false, or disparaging, remarks, comments, or statements concerning the Seller or its businesses, or any of its employees, officers, or directors, now or in the future.

**20.) ELECTRONIC MEDIA:** Buyer agrees that Seller may scan, image, or otherwise convert these terms and conditions into an electronic format of any nature. Buyer agrees that a copy of these terms and conditions produced from such electronic format is legally equivalent to the original for any and all purposes, including litigation.

**21.) LIMITATION OF LIABILITY:** IN NO EVENT SHALL SELLER BE LIABLE HEREUNDER FOR INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY FOR SUCH DAMAGES, AND SELLER'S TOTAL LIABILITY FOR DAMAGES UNDER THESE TERMS AND CONDITIONS AND FOR THE PURCHASE AND SALE OF THE GOODS AND/OR SERVICES SHALL BE LIMITED TO THE TOTAL FEES DUE HEREUNDER FOR THE INVOICE UPON WHICH A CLAIM IS BASED.

**22.) STATUS:** Buyer and Seller are separate entities. Nothing in these Terms and Conditions shall be construed as creating an employer-employee, joint venture, partnership, agency or exclusive distributorship relationship between Buyer and Seller.

**23.) INVENTORY:** In the event any inventory is maintained by the Seller on behalf of Buyer, the applicable Addendum(s) (Addendum 1 and/or Addendum 2) incorporated herein shall apply. In the event any inventory is provided by Seller on a sale on approval basis, the applicable Addendum (Addendum 3) incorporated herein shall apply. In the event any Addendum is applicable, the Buyer hereby acknowledges and agrees that Goods or other materials are only considered to be owned by Buyer if Buyer has fully paid for such Goods or other materials and the Buyer's account is current and in good standing with Seller. In the event that Buyer's account is in default for any period of time, ownership of any Goods which have not been paid for but which are still in the custody of Seller shall immediately transfer back to the Seller. Seller may resell such Goods, and the proceeds therefrom may be used to satisfy any portion of any unrelated outstanding debt owed, which shall include all amounts outstanding plus a forty percent (40%) restocking fee for such Goods.

## **ADDENDUM 1**

### **Buyer Owned Inventory**

Seller may, from time to time, house materials or inventory owned by Buyer ("Buyer Materials") on Seller's premises or in other areas designated by the Seller ("Seller Facility"), in order for Seller to perform Services for Buyer, and Buyer and Seller desire to agree to the terms and conditions upon which Seller will store such Buyer Materials. Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Buyer agrees to pay the storage and other fees associated with Seller's storage, inventorying and warehousing of the Buyer Materials ("Buyer Materials Warehouse Storage Fees"), unless otherwise agreed upon.
2. Upon Seller's receipt of Buyer Materials, Buyer agrees that it shall bear, and insure against, all risk of loss at all times while such Buyer Materials are located at the Seller's Facility or while such Buyer Materials are under the direction and control of Seller. In no event shall Seller be liable for any loss or damage to the Buyer Materials.
3. In the event Buyer has not placed an order with Seller, or there exists only de minimis activity related to the Buyer Materials, for a period of three (3) months or upon expiration or termination of this Addendum, Seller will use reasonable efforts to notify Buyer of any such Buyer Materials which remain under Seller's direction or control and, unless otherwise agreed to in writing by both parties, Buyer shall accept return shipment of all such remaining Buyer Materials. In the event such Buyer Materials are returned to Seller, Buyer shall remain liable for all costs related to the shipment of such Buyer Materials. In the event Buyer does not accept return shipment of the Goods in a commercially reasonable time, Seller shall have the right to destroy, resell or otherwise dispose of the Buyer Materials and Buyer shall be liable for all costs and expenses related thereto, including but not limited to all costs of shipment, destruction, resale, enforcement of and collection under this Agreement, including reasonable attorneys' fees.
4. This Addendum shall remain in effect until such time as Seller is no longer in possession or control of any Buyer Materials, provided that Seller may terminate this Addendum immediately for, with or without cause and without notice to Buyer.

## ADDENDUM 2

### Seller-Managed Inventory

Seller may, from time to time, purchase materials and/or inventory on Buyer's behalf ("Seller-Managed Inventory") and such Seller -Managed Inventory shall be stored at Seller's facility ("Seller Facility") in order for Seller to perform Services for Buyer. Buyer and Seller hereby agree to the terms and conditions upon which Seller will warehouse and store such Seller-Managed Inventory. Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Buyer agrees to pay the storage fees associated with Seller's storage, management, and inventorying of the Seller-Managed Inventory ("Seller-Managed Inventory Warehouse Storage Fees") unless otherwise agreed upon in a writing executed by both parties.
2. In the event (a) a Buyer has not placed an order with Seller, or there exists only de minimis activity related to the Seller -Managed Inventory, for a period of three (3) or more months; (b) upon the expiration or termination of this Addendum; or (c) the expiration or termination of any agreement, whether written or oral, between the parties to which the Seller-Managed Inventory is addressed or the subject of, then Seller will use reasonable efforts to notify Buyer of any such Seller-Managed Inventory which remains in Seller's possession, direction or control and, unless otherwise agreed to in writing by both parties, Seller shall invoice Buyer for such Seller-Managed Inventory. Buyer shall pay Seller within three (3) days following receipt of such invoice. For amounts owed which are more than thirty (30) days past due, Seller may charge Buyer interest in the amount of 2% compounded monthly interest or the maximum rate permitted by law, whichever may be greater. Upon receipt of payment from Buyer, Buyer shall accept shipment of all such remaining Seller-Managed Inventory and shall be responsible for all other costs or expenses related to the return of such Seller-Managed Inventory. Risk of loss of Seller-Managed Inventory shall transfer to Buyer upon Seller's delivery of the Seller-Managed Inventory to the carrier at Seller's facility where the Seller-Managed Inventory is stored. In addition to all other remedies available to Seller, in the event that Seller does not receive full payment for the Seller-Managed Inventory within thirty (30) days of the invoice date, Seller shall have the right to destroy, resell or otherwise dispose of such Seller -Managed Inventory and, in addition to the invoiced amount of the Seller-Managed Inventory, Buyer shall be liable for all costs and expenses related thereto, including but not limited to all costs of shipment, destruction, resale, enforcement of and collection under this Agreement, including reasonable attorneys' fees.
3. This Addendum shall remain in effect until such time as Seller is no longer in possession or control of any Seller-Managed Inventory. Seller may terminate this Addendum immediately, with or without cause and without notice to Buyer.

## **ADDENDUM 3**

### **Sale on Approval Inventory**

Buyer may, from time to time and upon request to Seller, obtain certain quantities of Goods from Seller on a sale on approval basis (the "Sale on Approval Goods") and such Sale on Approval Goods shall be stored at Buyer's facility or at a location otherwise agreed upon by the Seller ("Buyer Facility"). Buyer and Seller hereby covenant and agree that, prior to the shipment of any Sale on Approval Goods, Buyer and Seller shall each execute and deliver to the other a sale on approval agreement (the "Sale on Approval Agreement"). Seller shall provide a draft of the Sale on Approval Agreement upon Buyer's request to Seller to obtain Sale on Approval Goods, and Buyer and Seller hereby covenant and agree to execute the Sale on Approval Agreement in a form substantially similar to the draft provided by Seller. Buyer and Seller agree and acknowledge that the Sale on Approval Agreement shall generally include, among other customary items, the following items:

1. Seller shall retain title to the Sale on Approval Goods unless and until they are accepted by Buyer, as more fully set forth in the Sale on Approval Agreement.
2. Buyer shall assume the risk of loss, theft or damage of the Sale on Approval Goods upon delivery of the Sale on Approval Goods at the Buyer Facility.
3. Buyer agrees to store the Sale on Approval Goods: (a) in Buyer's Facility in such a manner as to protect them from damage or deterioration; and (b) in areas of the Facility segregated from all other goods and property located at the Buyer Facility and shall clearly identify them as the property of Seller by conspicuous sign or placard.
4. Buyer shall bear all costs associated with the storage, management and inventorying of the Sale on Approval Goods.
5. Seller shall have the right to inspect the Buyer Facility during business hours with reasonable notice.
6. Without derogating from Seller's rights as owner of the Sale on Approval Goods, Buyer shall grant to Seller a purchase money security interest in the Sale on Approval Goods.
7. Buyer shall maintain the Sale on Approval Goods free and clear of and from and against all liens and encumbrances of any nature whatsoever.
8. This Addendum, together with the Terms and Conditions to which this Addendum is attached and the Sale on Approval Agreement, when and if executed, constitutes and contains the entire agreement between the parties with respect to the Sale on Approval Goods.