

# AMERICOLD PURCHASING TERMS & CONDITIONS

These Standard Purchasing Terms & Conditions (“Agreement”) shall apply to each and every company (“Supplier”) distributing services, goods or products (“Products”) through, or selling Products to AmeriCold Logistics, LLC, its parent, subsidiaries, and/or affiliates (hereinafter, singularly or collectively, “We” or “Company”). Capitalized terms not otherwise defined herein shall have the meanings given to such terms in any properly executed, written agreement between Company and Supplier.

## I. Contract

1. The term “Product(s)” refers to the subject of this Agreement, and therefore may refer to hardware, software, services, parts of Products, or any combination of them.

2. No agreement or understanding to modify this Agreement shall be binding upon Company unless agreed to in writing by an authorized employee of Company. **ANY AND ALL PREVIOUS AGREEMENTS, SUPPLIER TERMS & CONDITIONS HOWEVER PROVIDED, ACKNOWLEDGMENT OR INVOICE, OR UNDERSTANDINGS WHICH ARE INCONSISTENT WITH ANY OF THE VARIOUS TERMS AND CONDITIONS HEREIN SET FORTH ARE HEREBY CANCELED AND RENDERED NULL AND VOID TO THE EXTENT OF SUCH CONFLICT AND/OR INCONSISTENCY.** The invalidity in whole or in part of any other provision hereof shall not affect the validity of any other provision.

## II. Changes

Company reserves the right at any time to make changes in the specifications, drawings, samples, or other description to which the Products are to conform, in the methods of shipment and packaging, or in the time or place of delivery. In such event, any claim for an adjustment shall be mutually satisfactory to Company and Supplier, but any claim by Supplier for an adjustment shall be deemed waived unless notice of a claim is made in writing within thirty (30) days following Supplier's receipt of such changes from Company. Price increases and/or extensions of time shall not be binding upon Company unless evidenced by a purchase order change issued by Company or otherwise by a written acknowledgement of the parties. No substitutions of materials or accessories may be made without Company's written consent. No charges for extras will be allowed unless such extras have been ordered in writing by Company and the price agreed upon.

## III. Specifications and Inspections

All data submitted to Supplier in connection with the Product is hereby incorporated by reference. All Products ordered to Company's specifications will comply with such specifications current as of the date of this Agreement unless otherwise authorized by Company. The Product shall be subject to inspection and test by Company at all times, including (as applicable) the period of manufacture for hardware, the period of development for software and/or the period of

performance for services at a mutually agreed location; provided Company provides not less than 24 hours written notice of its intent to inspect and test the Product. The confidentiality terms herein shall apply to any such site visit by Company. If any inspection or test is made on Supplier's premises, Supplier shall, without additional charge, provide all reasonable facilities and assistance for the safety and convenience of Company's inspectors. Company reserves the right to reject Products which do not conform to the specifications, drawings, and/or other data, or which do not comply with the warranty hereinafter stated. Company may charge Supplier for the cost of an above-normal level of inspection of Products if rejection of the shipment based on Company's normal inspection level endangers project schedules and if the inspected Products are necessary to meet project schedules. If rejected after delivery due to nonconformance which is not discoverable pursuant to Company's reasonable inspection, rejected Products will be returned to Supplier at Supplier's risk and expense. Payment for any Products shall not be deemed acceptance thereof, and if such Products are rejected after payment Company shall be entitled to return the same for full refund.

## IV. Price/Payment Terms

1. Company shall not be billed at a price higher than the price last charged or quoted by Supplier for the same Products unless a higher price is authorized in writing by Company. Supplier represents that the price charged for the Products covered by this Agreement is the lowest price charged by Supplier to buyers of a class similar to Company purchasing in quantities and under circumstances comparable to those specified in this Agreement. Any price reduction made by Supplier with respect to the Products ordered hereunder, subsequent to the placement of the order and prior to Company's receipt of the Products, shall apply to this Agreement.

2. Company shall pay all correct invoices within forty-five (45) days from date of invoice. In the event of a good-faith dispute regarding an invoice, Company may withhold payment; provided that Company pays all undisputed amounts thereunder.

## V. Extras

No charges will be allowed for taxes, import duties, transportation, packaging, packing, returnable containers, documentation, and media unless otherwise agreed. All sales, use, excise, or similar taxes to be paid

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by Company must be itemized separately hereon and on invoices. Shipments must be packaged according to specifications or, if not covered in specifications, so as to permit efficient handling, provide adequate protection, and comply with requirements of carrier. Damage resulting from improper packaging will be charged to Supplier.

### **VI. Warranty**

Supplier warrants for the period set forth in the appended document; otherwise such warranty shall be for one (1) year after date of receipt that the Products furnished hereunder will be in full conformity with all specifications and/or other descriptions, fit for its particular purpose, and will be merchantable and of good quality material and workmanship, free from defects. This warranty shall be in addition to any warranties of broader scope and service warranties and guarantees given Company by Supplier; shall survive inspection, test, acceptance, and payment; and shall run to Company, its successors, assigns, and customers. Company may, at its option, either return for full refund or credit, or require prompt correction or replacement of defective or nonconforming Products, which right shall be in addition to such other rights as Company may have in law or equity. Return to Supplier of any defective or nonconforming Products shall be made at Supplier's expense and no replacements of defective or nonconforming products shall be made unless specified by Company. Products required to be corrected or replaced shall be subject to this warranty and a new warranty period and to the above § III. to the same extent as products originally delivered under this Agreement.

### **VII. Delivery**

The time or times of delivery specified in this Agreement are of the essence. Any delay will be excused only if (i) such delay is due to fire, windstorm, riot, act of God, act of public enemy, or other unforeseeable causes (except for labor disputes) beyond the control and without fault or negligence of Supplier, and if (ii) Supplier shall have notified Company in writing of the existence of such cause within five (5) days after the commencement of the delay, giving all pertinent information concerning such cause. Unless otherwise provided in this Agreement, no delivery required hereunder shall be made more than seven (7) days prior to the applicable delivery date, and Company may return earlier deliveries at Supplier's risk and expense or charge to Supplier any additional costs sustained because of the same. If delivery of Products is not accomplished at the time or times indicated in this Agreement, Company reserves the right, without liability and in addition to its other rights and remedies, to terminate this Agreement by notice effective immediately upon receipt by Supplier and to arrange for completion of performance and/or to

purchase substitute products elsewhere and charge Supplier with any loss incurred including, but not limited to, any difference between the Supplier's price for the Product and the price of the substitute product. No provision of this Agreement for the delivery of products in installments shall be construed as making Supplier's obligation severable. Shipments sent C.O.D. without Company's written consent will not be accepted and will be at Supplier's risk.

### **VIII. Company-Furnished Property**

The following definitions shall apply to this paragraph. "Company Tools" are tools, equipment, or other property or information (such as schematics, drawings, plans, models, etc.) furnished to Supplier by Company. "Non-Unique Tools" are either general tools or special tools made to produce and which have application only to produce the Products. "Unique Tools" are tools which have application only to Supplier's method of operation which may be either general or special. Company Tools shall remain the property of Company. Unless otherwise agreed, Non-Unique Tools which are specifically paid for by Company, whether itemized separately or included in the price of any Product and are for use in the performance of this Agreement, shall be and remain Company's property. Unless otherwise previously agreed in writing, other Non-Unique Tools and Unique Tools shall be the property of Supplier, but any such tools shall be subject to use by Company in the event Supplier is unable to make deliveries due to a cause set forth in, and in consideration of, § VII. Any property owned by Company shall be used only in filling the order set forth in this Agreement and any similar orders from Company shall be held at the Supplier's risk, and shall be kept insured by the Supplier at the Supplier's expense while in Supplier's custody and control in an amount equal to the replacement cost thereof, with loss payable to Company. When so instructed by Company, the Supplier shall deliver any property owned or subject to use by Company to Company (or to any other person Company may designate) in good condition, ordinary wear and tear excepted, and such property shall be subject to repossession or removal by Company upon Company's instructions.

### **IX. Mutual Confidentiality**

In the course of their relationship, the parties may disclose to each other written or electronically communicated or stored information under the Agreement which they deem confidential, including, without limitation, pricing and sales information and customer names ("Confidential Information"). Accordingly, the parties hereby agree as follows: (A) each party shall not disclose Confidential Information to any other person, firm or corporation (for Supplier including, without limitation, affiliated corporations and separate business units) except as provided herein, and

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shall use the same degree of care, but not less than reasonable care, to avoid publication or dissemination of such Confidential Information as they employ with respect to their own information which they do not desire to have published or disseminated. All Confidential Information shall be retained by each party in a secure place with access limited to only such of its employees or agents (including consultants, accountants and attorneys) who need to know such information for purposes of the Agreement and each of the foregoing persons shall be informed of the existence and terms of this section and each party hereby acknowledges and agrees that it shall be liable to the other for any breach hereunder by its employees or agents; and (B) each party shall not use any Confidential Information in connection with its own marketing or product pricing or other internal purposes except to the extent necessary to fulfill its obligations under the Agreement; and (C) each party shall not solicit or market any product to any of the other party's customers based upon information provided to it by the other party (whether by customer list, customer registration or otherwise); and (D) at the conclusion of this relationship or upon demand by the other party, all Confidential Information, including marketing documents, other written notes, diagrams, memoranda, or notes taken by each party regarding Confidential Information, shall be returned to the other party or, at the request of the other party, destroyed except for one electronic copy maintained pursuant to a disaster recovery plan. The term "Confidential Information" shall not include, and each party shall have no obligation with respect to, any information which: (i) is already known to it; or (ii) is or becomes publicly known through no wrongful act of it; or (iii) is rightfully received from a third party without restriction and without breach of an agreement; or (iv) is independently developed by it; or (v) is approved for release by written authorization of the other party. The parties may disclose any Confidential Information received hereunder pursuant to any applicable law, regulation or court order, provided that such disclosure will be limited to the minimum acceptable level of disclosure and that the party required to disclose such information will immediately notify the other party of the imminent disclosure and reasonably cooperate to minimize or prevent such disclosure to the maximum extent allowed under applicable law, regulation or court order. Each party acknowledges that disclosure or improper use of the Confidential Information would cause the other party immediate and irreparable harm. Each party agrees that the other party will be entitled to equitable relief in addition to any other remedies available to it. The parties acknowledge that this section shall be subject to applicable law.

### **X. Rights in Development**

This paragraph shall apply if the Product is services, or if

the Product is hardware or software to be designed or developed and such design or development is paid for by Company, whether itemized separately or included in the price for one or more Products to be furnished. Supplier shall disclose and assign on demand, and it does hereby assign, to Company any and all inventions, improvements, or developments, each whether patentable or not, which it may make or assist in making in the course of such development. Supplier assigns, and agrees hereafter on demand to assign, to Company, all patents, copyrights, and applications for patents or copyrights, in connection with any such invention, improvement, or development and to do all acts and to execute all instruments which Company may request. Supplier shall cause every appropriate person employed by or associated with it to enter into an agreement under which such person shall disclose and assign to Supplier or Company all inventions and execute all papers and do all acts deemed necessary by Supplier or Company relative to assignment and patent protection of such inventions. In addition, all information, ideas, results, and data developed by Supplier as a result of developmental work contemplated by this section shall be transmitted by Supplier only to Company and shall become the exclusive property of Company, and shall likewise be regarded by Supplier as confidential for the same period and subject to the same exceptions as are provided in § IX. Supplier hereby warrants that it is free to enter into this Agreement and has no obligations or requirements under any other agreement contrary to any of the terms and conditions contained herein.

### **XI. Indemnification**

Supplier shall promptly investigate and defend, at its own expense, indemnify and hold Company and its directors, officers, employees and affiliates harmless against all claims, allegations, suits, actions, or proceedings in which Company, or its affiliates, subsidiaries, agents, their successors, assigns, distributors, dealers, customers or other users of Company's or its subsidiaries' equipment, software, supplies, or services are made defendants or claimed potential defendants for any infringement, claimed infringement, or alleged inducement of infringement, or unauthorized, or unlawful use of any patent, copyright, or trademark, wherever registered or issued, or trade secret, mask work, or proprietary data, or other information resulting from the manufacture, sale, use, or lease, or other disposition of any Product purchased under this Agreement. Supplier further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suits or proceedings against any such defendants. Supplier shall have the right to settle any such suits, actions, or proceedings on terms and conditions of Supplier's own selection, provided they are not in conflict with the terms and

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conditions provided herein. In the event Supplier fails to promptly investigate and defend or settle as provided hereinabove, then Company shall, following notification to Supplier, have the right from that time forward to have sole control of the defense of any said claim, allegation, suit, action, or proceeding and all negotiations for its settlement or compromise and Supplier agrees to pay, as they become due, all of the costs, expenses, and reasonable attorneys' fees incurred and judgments or decrees which may be rendered. This indemnity does not extend to any suit or proceeding which is based upon a patent claim covering a combination in which any Product furnished under this Agreement is merely an element of the claim combined with other devices or elements not furnished hereunder unless Supplier is a contributory infringer, nor does it extend to any Product whose infringement is a direct result of Supplier being required to adhere to a specific product design provided to Supplier by Company.

### **XII. Liability**

1. In no event will Company be liable to supplier for any indirect, incidental, consequential, or punitive damages, or for loss of profits, revenue, or data, whether in an action in contract, tort, strict liability, or otherwise, even if advised of the possibility of those damages.

2. Except for personal injury caused by Company's negligence, Company's cumulative liability under this Agreement will not exceed the aggregate amount paid by Company under this Agreement, even if a term of this Agreement fails of its essential purpose. The remedies of Supplier specifically set forth in this Agreement constitute Supplier's exclusive remedies for the breaches by Company to which they relate.

### **XIII. Assignment and Subcontracts**

Supplier shall not assign this Agreement or any of Supplier's rights hereunder, including, but not limited to, Supplier's right to receive any money due or to become due hereunder; nor shall Supplier enter into a subcontract with any other party for the furnishing of any completed or substantially completed products or services described in this Agreement without, in each case, Company's prior written consent.

### **XIV. Compliance with Laws**

Supplier shall at all times comply with all applicable federal, state, and local laws, regulations, rules, and orders. Any provision which is required to be a part of this Agreement by virtue of any such law, regulation, rule, or order is incorporated by reference. Supplier agrees to submit all reports, certifications, and other documents as required. Supplier shall provide all product information related to the handling of the products purchased under this Agreement as may be required by law.

### **XV. Waiver**

A waiver of a breach of any term of this Agreement will not be construed as a waiver of any succeeding breach of that term or as a waiver of the term itself. A party's performance after the other's breach shall not be construed as a waiver of that breach. No failure or delay by either party to enforce or take advantage of any provision or right under this Agreement shall constitute a subsequent waiver of that provision or right, nor shall it be a waiver of any of the other terms and conditions of this Agreement.

### **XVI. Termination**

Company may terminate this Agreement in whole or in part at any time upon Company's written notification to Supplier as follows:

1. For any reason at Company's convenience upon thirty (30) days written notice and in such case the extent of Company's liability shall be limited to:

(a) if the Product is software or services, to pay the portion of the contract price as the work completed bears to the whole, or

(b) if the Product is hardware, to pay the cost of the existing "finished goods" inventory, but no more than required to fulfill the next delivery schedule within the thirty (30) days following the date of termination, plus the existing "work-in-process" inventories required to fulfill an additional thirty (30) days of deliveries, except that there shall be no liability for inventories in either category which is readily usable or resalable. "Finished goods" shall mean goods that have passed final acceptance test and are waiting delivery. "Work-in-process" shall mean material in varying stages of completion with some degree of labor applied and/or individual piece parts and/or raw material in a stage of completion no more than necessary to meet delivery schedules.

2. For any material default by Supplier involving:

(a) Supplier's failure to develop the Product, deliver the Products, and/or render the services specified herein within the time designated herein, or

(b) Supplier's failure to make progress in the performance of its obligations under this Agreement reasonably satisfactory to Company.

Company may terminate this Agreement if Supplier does not cure such default within thirty (30) days of Company's written notice of breach to Supplier.

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Supplier may terminate this Agreement in whole upon Supplier's written notice to Company upon the following:

1. For Company's failure to make undisputed payments in accordance with payment terms; provided that Supplier must first give Company ten (10) days written notice of nonpayment.
2. For any material default by Company of a term of this Agreement.

Either party may terminate this agreement immediately upon written notice if a party becomes the subject of any proceedings under state or federal law for the relief of debtors or otherwise becomes insolvent, or bankrupt, or makes assignments for the benefit of creditors. In the event of termination by Company hereunder, Company shall have no liability to Supplier as a result of such termination. In the event of termination for any reason, Company may further notify Supplier that all right, title, and interest in and to all or any portion of materials acquired by Supplier for the performance of this Agreement, work-in-process, and/or completed products specified in such notice, shall pass immediately to Company upon payment therefore. Company shall have the right to enter upon the premises where such property (and/or any Company property described in § VIII. hereof) may be located and take possession thereof.

### **XVII. Disputes**

1. This Agreement has been made and delivered in the United States, and the laws of the State of Georgia (excluding any choice of law rules) will govern its interpretation and enforcement and the relationship between Supplier and Company, except that the U.S. Federal Arbitration Act will govern the interpretation and enforcement of subsection 2 below. If one party files a court action alleging claims subject to the second paragraph of this section, and the other party successfully stays the court action or compels arbitration of the claims, or both, the party filing the court action will pay the other's costs and expenses relating to the court action, including attorneys' fees.

2. Supplier and Company agree to settle by arbitration any controversy or claim between them, including

without limitation those related to this Agreement or any Product, whether based on contract, tort, fraud, misrepresentation, or other legal theory. A single arbitrator will conduct the arbitration in Atlanta, Georgia under the then-current rules and supervision of the American Arbitration Association. Supplier and Company will select an arbitrator from a panel of persons knowledgeable in design and manufacturing of Product which is the subject of this Agreement. The arbitrator will have the authority to award temporary and permanent injunctive relief, but may not award punitive or exemplary damages to either party. The decision and award of the arbitrator will be final and binding and may be entered in any court having jurisdiction. Supplier and Company will pay their own attorneys' fees associated with the arbitration, and will pay the other costs and expenses of the arbitration as the rules of the American Arbitration Association provide.

3. Neither party may bring any action, regardless of form, related to this Agreement or any Product more than one (1) year after the party bringing the action knew or should have known that the cause of action accrued.

4. The duty to arbitrate under this section extends to any director, officer, employee, agent, or affiliate making or defending any claim which would otherwise be arbitrable.

### **XVIII. Survivorship**

On termination of this Agreement for any reason, all warranty, infringement, confidentiality, arbitration, and liability obligations and limitations, and those terms which by their nature are intended to survive, will survive. Termination will not prejudice either party to require performance of any obligation due at the time of termination.

### **XIX. Relationship**

Company and Supplier are contractors independent of one another. Nothing in this Agreement is intended to or will constitute either party as an agent, legal representative, or partner of the other for any purpose.