



WHECO CORP. TERMS AND CONDITIONS OF SALE

1. Applicability.

- (a) These terms and conditions of sale (these "Terms") are the only terms that govern the sale of the goods ("Goods") and services ("Services") by WHECO Corp. ("WHECO") to the individual or entity purchasing Goods and/or Services ("Customer"). The accompanying proposal and/or quotation provided by WHECO (the "Proposal") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The Proposal shall be valid for a period of 30 days unless specified otherwise in writing by WHECO.
- (b) Customer acknowledges and agrees that these Terms are incorporated in, and are a part of, each proposal, quotation, purchase order, service order, invoice, release, requisition, work order, shipping instruction, specification, and/or any other document, whether expressed verbally, in written form, or electronic communication, relating to the Goods and/or Services. These Terms prevail over any of Customer's terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms, and any other terms and conditions that may be proposed by Customer or that appear on or are referenced in any purchase order, release, facsimile, email, correspondence, acknowledgement, or other document or communication, even though such additional or different terms and conditions are issued subsequent to the date of this Agreement, will not apply. WHECO's delivery of Goods or performance of Services does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.
- (c) Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. Goods and Services.

The Goods will be delivered in connection with WHECO's performance of the Services or within a reasonable time after such performance. WHECO shall provide the Services to Customer as described in the Proposal in accordance with these Terms. WHECO shall use commercially reasonable efforts to meet any delivery or performance dates specified in the Proposal, but any such dates shall be estimates only.

3. Customer's Obligations.

- (a) Customer shall: (i) cooperate with WHECO in all matters relating to the Good and Services and provide access to Customer's premises, and such other facilities as may reasonably be requested by WHECO, for the purposes of delivering the Goods and/or performing the Services; (ii) respond promptly to any WHECO request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for WHECO to deliver the Goods and/or perform the Services in accordance with the requirements of this Agreement; (iii) provide such Customer materials (including without limitation a safe and working electrical source) or information as WHECO may request to deliver the Goods and/or perform the Services in a timely manner and ensure that such materials or information are complete and accurate in all respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Goods and Services.
- (b) Notwithstanding the obligations contained in paragraph 3(a)(iv), upon Customer's request, and to the extent possible, WHECO will administer and/or obtain any and all necessary permits, subject to applicable rates generally ranging from 3%-3.5% of the total cost of the Goods and/or Services plus time for processing. If Customer requests WHECO to administer and/or obtain a necessary permit, Customer will be responsible for reimbursing WHECO for the full amount of the costs incurred by WHECO for administering and/or obtaining said permit.

4. Customer's Acts or Omissions.

If WHECO's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or any of its agents, subcontractors, consultants, or employees, WHECO shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. Change Orders.

- (a) Customer may request changes to the Goods and/or Services by submitting a written request to WHECO referencing the applicable Proposal and setting forth in detail the requested changes to the Goods and/or Services. WHECO will use commercially reasonable efforts to accommodate any such request provided that WHECO reserves the right to reject such request in its sole discretion. WHECO shall promptly advise Customer in writing of the effect any such request has on price and/or delivery date. WHECO shall not be required to institute



any Customer-dictated change until the parties have agreed in writing to an equitable adjustment to the price and/or delivery date. In the event that such request is approved by WHECO, the change to the Goods and/or Services shall be documented in a written change order signed on behalf of both parties. WHECO may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis.

- (b) Notwithstanding anything to the contrary contained in this Agreement, WHECO may, from time to time, change the Goods and/or Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Goods or Services, the fees related to same, or any performance dates set forth in the Proposal. Prices for Goods and Services reflected in any publication including, but not limited to, WHECO's marketing materials and websites, are subject to change without

6. Fees and Expenses: Payment Terms.

- (a) In consideration for the delivery of Goods and/or performance of Services by WHECO and the rights granted to Customer under this Agreement, subject to any increases which the parties have agreed to in writing pursuant to these Terms, Customer shall pay the fees set forth in the Proposal. Customer agrees to reimburse WHECO for all reasonable travel and out-of-pocket expenses incurred by WHECO in connection with the delivery of Goods and/or performance of the Services
- (b) Except as otherwise provided in the Proposal, the prices quoted and/or otherwise contained in the Proposal are valid for a period of 30 days from the date of the Proposal.
- (c) Except as otherwise expressly set forth in the Proposal, Customer shall pay all invoiced amounts due to WHECO within 30 days from the invoice date. Customer shall make all payments hereunder in immediately available funds in US dollars. In the event payments are not received by WHECO by the applicable due date, WHECO may: (i) charge interest on such unpaid amounts at a rate of 8% or, if lower, the maximum amount permitted under applicable law from the date such payment was due until the date paid, and/or (ii) suspend delivery of all Goods and performance of all Services until payment has been made in full. Customer will pay all court costs, attorneys' fees, and other costs and expenses incurred by WHECO in collecting past due amounts, including interest. Customer shall not withhold payment of any amounts due and payable by reason of any setoff of any claim or dispute with WHECO, whether relating to WHECO's breach, bankruptcy, or otherwise.

7. Taxes.

Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder. The prices quoted in the Proposal do not include applicable taxes or freight, which are the responsibility of Customer.

8. Intellectual Property.

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, Goods, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of WHECO in the course of performing the Services (collectively, the "Deliverables") shall be owned by WHECO. WHECO hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

9. Confidential Information.

All of WHECO's non-public, confidential, or proprietary information, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by WHECO to Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement or the delivery of Goods and/or the performance of Services is confidential and shall not be disclosed or copied by Customer without WHECO's prior written consent. Confidential Information does not include information that is: (a) in the public domain other than as a result of the Customer's breach of this Section; (b) known to Customer at the time of disclosure, as established by documentary evidence; or (c) rightfully obtained by Customer on a non-confidential basis from a third party. Customer agrees to use the Confidential Information only to make use of the Services and Deliverables. WHECO shall be entitled to injunctive relief for any violation of this Section.

10. Representation and Warranty.

- (a) With respect to the Goods, WHECO assigns to Customer, to the extent assignable, any warranties that are made by manufacturers and



suppliers of the Goods. OTHERWISE, GOODS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. With respect to the Services, WHECO represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.

- (b) Customer shall inspect the Goods and Services upon receipt. WHECO shall not be liable for a breach of the warranty set forth in Section 10(a) unless Customer gives written notice of the defective Goods and/or Services, reasonably described, to WHECO within three days of the time when Customer discovers or should have discovered that the Goods and/or Services were defective.
- (c) Subject to Section 10(b), WHECO shall, in its sole discretion, either: (i) re-perform such defective Services; or
 - (ii) credit or refund the price of such defective Services at the pro rata contract rate. Notwithstanding anything to the contrary herein, WHECO reserves the right to dispute any claims for breach of warranty. WHECO shall not be liable for a breach of the warranty set forth in Section 10(a) if: (x) the defect arises because Customer failed to follow WHECO's oral or written instructions as to the storage, installation, use, or maintenance of the Goods or Services; or (y) Customer alters or repairs the Goods or Services without the prior written consent of WHECO.
- (d) THE REMEDIES SET FORTH IN SECTION 10(c) ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND WHECO'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(a).

Disclaimer of Warranties.

- (a) EXCEPT FOR THE WARRANTY EXPRESSLY SET FORTH IN SECTION 10(a) ABOVE, WHECO MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR 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.

- (b) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with the Goods. Third Party Products are not covered by the warranty in Section 10(a). FOR THE AVOIDANCE OF DOUBT, WHECO MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT.

12. Indemnification.

To the fullest extent permitted by law, Customer, at its sole cost and expense, shall indemnify, defend, save, and hold harmless WHECO and its affiliates, and their respective officers, directors, managers, employees, agents, equity holders, successors, and assigns from and against any and all claims, third-party claims, demands, lawsuits, damages, actions, judgments, expenses (including reasonable attorneys' fees), losses (including direct, indirect, incidental, punitive, and/or consequential damages), liability for injury or death of persons, and/or loss, damage to, or destruction of property, in each case related to, arising out of, or in conjunction with this Agreement or WHECO's delivery of Goods and/or performance of Services.

12. Limitation of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL WHECO, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, LOSS OF DATA, DIMINUTION IN VALUE, LOST PROFITS OR BUSINESS OPPORTUNITIES, OR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, LOSSES, COSTS, OR EXPENSES WHATSOEVER, OR FOR COSTS OF COVER OR ATTORNEY OR EXPERT WITNESS FEES, REGARDLESS OF WHETHER ANY OF THE FOREGOING WERE FORESEEABLE, WHETHER WHECO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND/OR WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL WHECO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT

LIABILITY, OTHER TORT, OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT PAID OR PAYABLE TO WHECO BY CUSTOMER PURSUANT TO THE APPLICABLE PROPOSAL OR INVOICE. THIS SECTION 13 EXPRESSLY SURVIVES ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT.



14. Termination

In addition to any remedies that may be provided under this Agreement, WHECO may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. Notwithstanding the foregoing, in the event WHECO terminates this Agreement, Customer shall continue to owe and shall remain liable for any and all Goods tendered and/or Services rendered and pre-approved out of pocket expenses incurred by WHECO for which Customer has not yet rendered payment.

15. Waiver.

No waiver by WHECO of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by WHECO. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16. Force Majeure.

WHECO shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond WHECO's reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic or pandemic, COVID-19, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage.

17. Assignment.

Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of WHECO. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement. WHECO may, without Customer's consent, delegate, assign, or subcontract any or all of its duties, rights, or obligations under this Agreement.

18. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

19. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

20. Governing Law.

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Arizona. In the event that Customer breaches any provision of this Agreement or otherwise causes damages to WHECO arising out of its delivery of Goods or performance of Services, WHECO may institute an action specifically to enforce any term or terms of this Agreement, to seek any damages for breach of same, and/or to recover any damages sustained. If WHECO prevails in any form of litigation arising out of this Agreement, WHECO shall be entitled to recover from Customer its court costs, litigation expenses, and reasonable attorneys' fees incurred in prosecuting its claims.

21. Submission to Jurisdiction.

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the state or federal courts sitting in the State of Arizona, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

22. Notices.

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Proposal or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). All Notices shall be deemed to have been given (a) when delivered in person,

(b) on the day following delivery if sent by a nationally recognized overnight courier, or (c) on the fifth day after the date mailed by certified or registered mail, return



receipt requested, postage prepaid.

23. Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Survival.

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information, Limitation of Liability, Governing Law, Submission to Jurisdiction, and Survival.

25. Amendment and Modification

This Agreement may only be amended or modified in writing, signed by an authorized representative of each party, and specifically stating what portion of this Agreement is being amended.