



EMPOWERED PERFORMANCE

GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

OMAL USA Corp.

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CORPORATE



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1. APPLICABILITY AND DEFINITIONS

(a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods and services by OMAL USA CORP. (“**Seller**” or “**OMAL**”) to the buyer (“**Buyer**”).

(b) These Terms apply to any Contract between Seller and Buyer.

(c) The accompanying quotation, purchase order, order confirmation, invoice (together, the “**Sales Confirmation**”), the Contract, 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 (the “**Other Agreements**”), unless the Seller expressly states in any Other Agreement that the same supersedes, or has to be deemed in addition to, the Terms.

These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s purchase order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

(d) Notwithstanding anything to the contrary contained in this Agreement, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

(e) The terms defined below shall have the following meanings whenever used in these Terms:

- “**Contract**” means any written agreement between Buyer and Seller, including any purchase order accepted with order confirmation, involving the sale of the Seller’s Goods and Services.
- “**Goods**” means products marketed by the Seller and (i) manufactured by other sister companies of OMAL (ii) products assembled by OMAL with products manufactured by third parties, (iii) products manufactured by third parties.
- “**Services**” means the services related to the Goods such as commissioning tests, inspections, technical documentation, after-sales assistance provided by OMAL directly or through third parties.

2. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. Subject to Section 3 hereunder, Seller shall not be liable for any delays, loss, or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods at 1835 Airport Exchange Boulevard, Suite 100, Erlanger, Kentucky 41018 (the “Delivery



Point”) using Seller’s standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within five (5) days of Seller’s written notice that the Goods have been delivered to the Delivery Point. Buyer will unload and release all transportation equipment promptly so Seller incurs no demurrage or other expense.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

(e) Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.

(f) With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer’s premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. NON-DELIVERY

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller’s place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received.



(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

4. QUANTITY

If Seller delivers to Buyer a quantity of Goods of up 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. SHIPPING TERMS

Unless otherwise agreed, delivery of the Goods shall be made Free Carrier (FCA) - Incoterms 2020 Delivery Point.

6. TITLE AND RISK OF LOSS

Subject to Section 11 (a), title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

7. BUYER'S ACTS OR OMISSIONS

If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller 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 Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

8. INSPECTION AND REJECTION OF NONCONFORMING GOODS

(a) Buyer shall inspect the Goods within five (5) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at 1835 Airport



Exchange Boulevard, Building C, Erlanger, Kentucky 41018. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, deliver to Buyer the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are firm and made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. PRICE

(a) Buyer shall purchase the Goods and Services from Seller at the price[s] (the "**Price[s]**") set forth in Sales Confirmation.

(b) Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.

(c) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

10. PAYMENT TERMS

(a) Standard term, if not differently agreed, is "Advanced Payment at order confirmation". Buyer shall pay all invoiced amounts due to Seller within three (3) days from the date of receipt of the relevant invoice. Buyer shall make all payments hereunder by wire transfer of readily available funds and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of one-point five percent (1.5%) per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.



11. RETENTION OF TITLE

- (a) Seller shall retain title to the Goods until payment of the Price is received in full.
- (b) Until final payment is made in full, the Goods shall not be pledged to third parties.
- (c) In case Buyer does not pay the Price, Seller shall be entitled to withdraw from the Contract and take possession of the Goods already delivered to Buyer, but not paid for. Buyer hereby grants to Seller a first priority security interest in the Goods until the Price has been paid in full. Seller shall have the right to file a UCC-1 Financing Statement to perfect a security interest on all or any portion of the Goods, at any time.

12. LIMITED WARRANTY

- (a) Seller warrants to Buyer that for a period of eighteen (18) months from the date of delivery of the Goods at the Delivery Point ("**Warranty Period**"), that such Goods will materially conform to the specifications set forth in OMAL's general catalogue, as updated from time to time, available at www.omal.it, or in the quotation eventually sent by OMAL to Seller and/or in the technical documentation eventually provided by OMAL, and will be free from material defects in material and workmanship. The warranty does not cover ordinary wear and tear or consumable items.
- (b) Seller warrants to Buyer 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 and shall devote adequate resources to meet its obligations under this Agreement.
- (c) **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 12(A) AND 12(b), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**
- (d) 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 12(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A 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.**



(e) The Seller shall not be liable for a breach of the warranties set forth in Section 12(a) and Section 12(b) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Seller within eight (8) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 12(a) to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods or Services are defective.

(f) The Seller shall not be liable for a breach of the warranty set forth in Section 12(a) or Section 12(b) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(g) Subject to Section 12(e) and Section 12(f) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate; provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(h) Subject to Section 12(e) and Section 12(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 12(b), Seller shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

(i) THE REMEDIES SET FORTH IN SECTIONS 12(G) AND 12(h) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTIONS 12(A) AND 12(b), RESPECTIVELY.

13. LIMITATION OF LIABILITY; INDEMNIFICATION

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RE-



LATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED ONE (1) TIMES THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.

(c) Buyer shall indemnify, defend and hold harmless Seller, and its officers, directors, employees and agents from and against any losses, liabilities, damages, demands, obligations, fines or civil penalties, expenses, costs, and fees (including, but not limited to, court costs and reasonable attorney's fees) of whatsoever kind and nature (collectively, "Losses"), imposed on, incurred by, or asserted against, Seller, its officers, directors, employees and agents, in any way relating to or arising out of (a) Buyer's failure to follow Seller's oral or written instructions as to the storage, installation, commissioning, use, or maintenance of the Goods; (b) Buyer's alterations or repairs of Goods without the prior written consent of Seller (c) the use, operation, possession or disposition of the Goods by Buyer, (d) the willful misconduct or gross negligence of Buyer or any of its officers, directors, employees or agents, or (e) the negligence of Buyer or any of its officers, directors, employees or agents, to the extent that Losses are caused by such negligence.

14. INSURANCE

During the term of this Agreement and for a period of eighteen (18) thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than One Million Dollars (\$1,000,000) with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with ninety (90) days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

15. COMPLIANCE WITH LAW

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

16. TERMINATION

In addition to any remedies that may be provided under these Terms, Seller may ter-



minate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, 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.

17. WAIVER

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, 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.

18. CONFIDENTIAL INFORMATION

All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, know-how, research and development, patents, ideas, processes, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, 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 is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. INTELLECTUAL PROPERTY RIGHTS

Any intellectual property rights connected with the Goods (the "IP Rights"), including any individual part thereof, both software and hardware and any documentation pertaining thereto, including designs, drawings, technical specifications, belong solely to the Seller and/or to the manufacturer of the Goods. The Buyer is obliged not to carry out any act that is incompatible with the ownership of the IP Rights, and shall inform the Seller in writing of any possible infringement of the IP Rights immediately.

20. FORCE MAJEURE.

The Seller shall not be liable or responsible to Buyer, 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 the reasonable control of Seller 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, , lockouts, 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, materials or telecommunication breakdown or power outage.

21. SUSPENSION OF DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

Seller shall have the right to suspend the delivery of Goods and the Performance of Services in extraordinary events beyond the reasonable control of Seller, including, without limitations, plague, epidemic, pandemic, outbreaks of infectious or viral disease or any other public health crisis without liability and upon written notice to Buyer as Seller determines to be necessary or appropriate:

- (a) for the health and safety of the Seller's employees or contractors, including without limitation:
 - (i) to comply with any shelter-in-place, quarantine requirements, social distancing, travel restrictions, or any other order, instruction, or request of any government, public health, or emergency service organization, or other competent authority; or
 - (ii) due to shortages or unavailability of personnel or personal protective equipment.
- (b) as a consequence of economic downturn, business interruption, or cash-flow difficulties, including without limitation, adjustments in payments from lenders or investors; or
- (c) as a consequence of supply chain disruptions, including without limitation, labor and material shortages.

Seller shall have the right to suspend the delivery of Goods and the Performance of Services pursuant to Sections 20 whether or not the events listed therein qualify as a Force Majeure event under Section 19.

22. ASSIGNMENT

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

23. 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.



24. 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.

25. 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 New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

26. ARBITRATION

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be submitted to final and binding arbitration. The arbitration shall be conducted by one (1) arbitrator, in the English language, in the City of New York, New York, under the Commercial Arbitration Rules of the American Arbitration Association then in effect, upon written notice and demand of any party therefor. Any arbitration award rendered shall be binding, final and conclusive upon all parties, and judgment thereon may be entered in any Court having jurisdiction thereof. The prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party.

27. 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.

28. 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: Insurance, Compliance with Laws, Confidential Information, Governing Law, Arbitration, and Survival.

29. AMENDMENT AND MODIFICATION

OMAL reserves the right to modify and/or amend these Terms at any time.



OMAL S.p.A. Società Benefit

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