

Bautex Systems, LLC
Terms and Conditions of Sale and Acceptance (2017)

1. Offer and Acceptance; Entire Agreement. These Terms and Conditions (“**Terms**”), Bautex’s sales order form (“**Sales Order**”), and Bautex’s Credit Application and Agreement (“**Credit Application**”) (collectively, the “**Agreement**”) constitute the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Any person or entity ordering, purchasing or accepting delivery of goods or services, a Buyer (“**Buyer**”) from Bautex Systems, LLC (“**Bautex**”) irrevocably accepts the Agreement upon the earliest of: (i) Buyer placing an order for any goods or services of Bautex; (ii) accepting the delivery of any goods or performance of any services by Bautex; or (iii) paying any amount due to Bautex for goods or services. Bautex objects to and rejects any additional or different terms or conditions contained in Buyer's proposal, order, or other documentation, and such additional or different terms shall not become part of the contract between Bautex and Buyer unless expressly accepted in writing by an authorized representative of Bautex. To the extent these Terms contradict the Sales Order, or Credit Application, these Terms will prevail. Notwithstanding the foregoing, however, if Bautex and Buyer (“**Parties**”) have a written contract in effect between them, executed by hand, by authorized representatives of each of them, that expressly governs Bautex’s sale and Buyer’s purchase of such goods or services, then that written contract shall take precedence over any conflicting provision in this Agreement.

2. Changes to or Termination of a Sales Order. Each Sales Order signed by Buyer and returned to Bautex, may (a) be changed by the written agreement of the Parties, (b) unless stated to be non-cancellable on the face of the Sales Order, be terminated in whole or in part by Bautex at any time prior to Bautex’s delivery of the goods or performance of the services, and (c) not be revoked by Buyer unless Bautex agrees in writing to cancel that Sales Order.

3. Delivery; Performance; Title Transfer; Risk of Loss. All sales of goods are F.O.B. manufacturing facility (“**Delivery Point**”). Unless otherwise agreed, Bautex will select the freight carrier and arrange for shipping. Title and risk of loss shall pass to Buyer as soon as the goods are in the possession of the freight carrier. Bautex shall act on Buyer’s behalf in putting the goods in the possession of the freight carrier, but without responsibility on Bautex’s part for shipment or delivery. Use of a “delivered price” does not change these terms. Unless the purchase price is expressly stated on Sales Order to be a “delivered price,” the purchase price of the goods does not include any fees or costs related to handling, packaging, crating, labeling, storage, export, and other delivery expenses, and Buyer shall be separately liable for all such fees and costs. If the purchase price is stated to be a “delivered price,” then Buyer acknowledges that the stated purchase price was determined by Bautex based on the quantity of the goods ordered, the delivery location, the delivery date, and other factors; that any extraordinary increase in fuel cost may be added as a surcharge; and that any agreed-upon change to Buyer’s order will result in a new determination of the “delivered price” by Bautex. However, Buyer may review Bautex’s new delivered price before committing to any change in Buyer’s order.

4. Inspection and Rejection of Nonconforming goods. Upon delivery of the goods, Buyer shall inspect the goods within five (5) business days of receipt of the goods (“**Inspection Period**”). Buyer will be deemed to have accepted the goods after expiration of the Inspection Period unless it notifies Bautex during the Inspection Period in writing of any Nonconforming Goods and furnishes such written evidence or other documentation as required by Bautex. “**Nonconforming Goods**” means only the following: (i) product shipped is different than identified in the Sales Order; or (ii) product's label or packaging incorrectly identifies its contents. If Buyer notifies Bautex of any Nonconforming Goods within the Inspection Period, Bautex shall, in its sole

discretion, (i) replace such Nonconforming Goods with conforming goods, or (ii) credit or refund the price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Bautex exercises its option to replace the Nonconforming Goods, Bautex shall ship to Buyer the conforming goods. Buyer acknowledges and agrees that the remedies set forth in this Section 4 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 4, all sales of conforming goods to Buyer are final and Buyer has no right to return conforming goods to Bautex purchased under this Agreement.

5. Non-Delivery of goods. The quantity of goods recorded by Bautex on dispatch from Bautex's Delivery Point is conclusive evidence of the quantity received by Buyer upon delivery, unless Buyer can provide conclusive evidence proving the contrary within the designated Inspection Period. Bautex shall not be liable for non-delivery of goods, delay in delivery of goods, or any loss or damage that occurs to goods during transit. Buyer's sole remedy for claims or problems related to shipment or delivery shall be against the freight carrier. Any delay, damage, loss, or non-delivery shall not be grounds for Buyer to terminate its order. Bautex shall not be liable for any non-delivery of goods unless Buyer provides written notice to Bautex of the non-delivery within five (5) business days of the date when the goods would have been received in the ordinary course of business. Any liability of Bautex for non-delivery of goods shall be limited to, at Buyer's discretion, (i) delivering the goods within a reasonable time, or (ii) adjusting the invoice respecting such goods to reflect the actual quantity delivered.

6. Invoices; Payment Terms; Taxes. Payment for goods or services will be due prior to delivery of the goods or performance of the services, unless Bautex has agreed to extend credit to Buyer. To secure Buyer's payment of the purchase price and all other amounts due to Bautex in connection with such goods, Buyer grants Bautex a security interest in all goods delivered to Buyer and in any proceeds from such goods. Bautex may at its option file financing statements and other instruments to perfect this security interest. Bautex may in its sole discretion reevaluate whether to extend credit to any buyer, and may require payment in advance for any order at any time. If Bautex has agreed with respect to a particular order to extend credit, payment will be due from Buyer within the number of days specified on the face of the Sales Order (or if no number of days is specified, then within 30 days) after the earlier of (a) delivery of the goods or performance of the services, and (b) receipt of Bautex's invoice. Buyer shall report and pay all taxes and assessments imposed on Bautex or Buyer as a result of Bautex's sale or Buyer's purchase of goods or services, including but not limited to any applicable federal, state or local sales, use, value-added, or excise taxes or customs duties (collectedly, "**Taxes**"), but excluding the Texas franchise tax and the federal income tax. Bautex may but is not required by this Agreement to collect such Taxes from Buyer. If Buyer or a sale is exempt from any Taxes, Buyer must provide Bautex a valid exemption certificate at the time the order is placed. Any amount due to Bautex from the sale of goods or services that is not paid when due shall accrue interest at the highest rate allowed by applicable law, or 18% per year, whichever is lower, and Buyer shall be liable for Bautex's reasonable costs incurred to collect any past-due amount, including but not limited to reasonable attorney's fees and costs of arbitration.

7. Return and Restock. If Buyer asks to return previously ordered goods and Bautex agrees to accept them, Buyer shall pay the freight charge to deliver the returned goods to Bautex's facility, and shall pay Bautex 35% of the purchase price of those goods as a restocking fee. All returned goods must be in new condition when they arrive at Bautex's dock. If any returned goods are

not in new condition when they arrive, Buyer shall remain liable for the full purchase price, as well as the return freight charge.

8. LIMITED WARRANTIES.

a. All goods and services are sold pursuant to the separate Bautex Limited Warranty Statement that expressly applies to the goods or services purchased by Buyer. The exclusive warranty applicable to Bautex's goods and services are those that are expressly stated in a valid warranty statement duly issued by Bautex or a valid warranty statement included in the packaging of the goods, as applicable to the warranty for each type of goods. Bautex does not warrant failure due to workmanship, improper use during installation, abuse of the goods, or chemical incompatibility with other materials. Buyer represents to Bautex that Buyer is relying solely upon its own judgment, and/or upon the advice of Buyer's registered engineers and other competent professionals, in selecting Bautex's goods or services and in installing or using those goods or services.

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 limited warranty in Section 8a. For the avoidance of doubt, the Third Party Products are sold "AS IS".

c. EXCEPT FOR THE LIMITED WARRANTY FOR GOODS SET FORTH IN SECTION 8a, BAUTEX MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR THIRD PARTY PRODUCT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

d. Bautex shall not be liable for a breach of the limited warranty set forth in Section 8a unless: (i) Buyer gives written notice of the defect, reasonably described, to Bautex within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Bautex is given a reasonable opportunity after receiving the notice to examine such goods or services, if applicable, and Buyer (at the written request of Bautex) returns such goods to Bautex's place of business for the examination to take place there; and (iii) Bautex reasonably verifies Buyer's claim that the goods are defective.

e. Bautex shall not be liable for a breach of the limited warranty set forth in Section 8a if: (i) Buyer makes any further use of such goods after giving notice set forth in Section 8d; (ii) the defect arises because Buyer failed to follow Bautex'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 or services without the prior written consent of Bautex.

f. Subject to Section 8, Bautex 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 Bautex so requests, Buyer shall return such goods to Bautex at Bautex's expense. The limited warranty set forth in Section 8a does not cover any costs or expenses associated with 1) the removal of the Bautex product, if already installed; 2) the removal or replacement of any material, including the exterior or interior façade in connection with the testing, repair, removal or replacement of the Bautex product; 3) the cost to ship the replacement

Bautex product; or 4) damages or repairs of any kind or nature to the subject building, whether caused by removal or replacement of the Bautex product or other material, or otherwise.

g. THE REMEDIES SET FORTH IN SECTION 8f SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND BAUTEX'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8a.

h. Buyer may only transfer and assign a valid warranty statement issued as set forth in Section 8a to an End User. "End User" means a final purchaser that (i) has acquired a good for its own internal use and benefit; (ii) has not acquired the goods for resale, remarketing, distribution, or other use; and (iii) is the owner of one or a series of buildings, constructions or other structures where goods are, have been, or will be used, incorporated or installed.

9. LIMITATION ON LIABILITY. IN NO EVENT SHALL BAUTEX BE LIABLE TO BUYER, UNDER ANY EQUITABLE, COMMON LAW, TORT, CONTRACT, ESTOPPEL, NEGLIGENCE, STATUTORY, STRICT LIABILITY, OR OTHER THEORY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR CONTINGENT DAMAGES, OR ANY DAMAGES RESULTING FROM LOSS OF SALE, BUSINESS, PROFITS, DATA, OPPORTUNITY, OR GOOD WILL, EVEN IF THE REMEDIES PROVIDED TO BUYER UNDER THIS ORDER FAIL OF THEIR ESSENTIAL PURPOSE, AND EVEN IF BAUTEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER AND BAUTEX HAVE SPECIFICALLY AGREED TO ALLOCATE THE RISKS ASSOCIATED WITH THIS CONTRACT SO THAT BAUTEX SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY EXCEPT AS SET FORTH IN THE SEPARATE WARRANTY STATEMENT, AS DESCRIBED IN SECTION 8 OF THESE TERMS. BUYER HEREBY WAIVES AND RELEASES ANY OTHER CLAIM AGAINST BAUTEX FOR ANY LOSS OR DAMAGE ARISING IN CONNECTION WITH ANY ACTUAL OR ALLEGED BREACH OF THIS AGREEMENT OR THE PARTIES' RELATIONSHIP OF SELLER AND BUYER, REGARDLESS OF WHETHER THE CLAIM IS ASSERTED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE. IN ADDITION, BAUTEX'S LIABILITY FOR DAMAGES OF ANY KIND (WHETHER FOR GOODS DELIVERED, SERVICES PERFORMED, NON-DELIVERY OF GOODS, OR NON-PERFORMANCE OF SERVICES) SHALL IN NO EVENT EXCEED THE PRICE ACTUALLY PAID BY BUYER, IF ANY, FOR SUCH GOODS OR SERVICES.

10. INDEMNIFICATION. BUYER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BAUTEX AND ITS OFFICERS, DIRECTORS, MANAGERS, MEMBERS, AGENTS, AFFILIATES, SUCCESSORS AND PERMITTED ASSIGNS, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES (WHETHER ACTUAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE), LIABILITIES, DEFICIENCIES, CLAIMS, ACTIONS, JUDGMENTS, SETTLEMENTS, INTERESTS, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES OF WHATEVER KIND, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, EXPERT WITNESS CHARGES, AND OTHER OUT-OF-POCKET COSTS OF INVESTIGATION OR DEFENSE), THAT ARE INCURRED BY BAUTEX RELATING TO: (A) BUYER'S BREACH OF CONTRACT WITH BAUTEX OR ANY THIRD PARTY, OR (B) BUYER'S USE, INSTALLATION, HANDLING, SHIPPING, TRANSPORTATION, OR DISPOSAL OF THE GOODS, OR (C) ANY ACTUAL OR ALLEGED FAILURE OF

BUYER, OR ANY CONTRACTOR OF BUYER (OTHER THAN BAUTEX), TO COMPLY WITH ALL APPLICABLE LAWS, RULES, OR REGULATIONS.

11. Waiver; Reformation; Severability; Assignment. Failures to exercise any right, power or remedy under this Agreement, or failures to insist on the other Party's compliance with this Agreement, or customs, practices, or courses of dealing inconsistent with this Agreement, will not waive or otherwise prejudice either Party's rights under this Agreement. In case any provision in this Agreement shall be determined invalid, illegal or unenforceable, then such provision shall be reformed to be made legal or valid. If the provision cannot be made legal without best fulfilling the intended agreement, then the provision shall be deleted and the validity, legality and enforceability of the remaining provision shall not in any way be affected or impaired thereby. Buyer may not assign its rights or obligations under this contract, unless Buyer first obtains Bautex's written consent.

12. Force Majeure: Bautex shall not be liable or responsible to Buyer, nor deemed to have breached or defaulted this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent that such failure or delay is caused by or results from acts or situations beyond the control of the parties including, but not limited to, acts of God, strikes, lockouts, labor troubles, war, terrorism, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated, and such failure or delay makes it impracticable or commercially unreasonable for either party to perform under the Agreement; provided no force majeure shall apply to Buyer's obligation to pay in a timely manner for goods. If partial fulfillment of the Sales Order is possible or the Sales Order has already been partially fulfilled at the time of the event, Bautex may elect to terminate the remainder of the Sales Order or fulfill as much of the Sales Order as possible at pro rata cost, at Bautex's sole discretion.

13. Modification; Governing Law; Cumulative Remedies. No modification, amendment, revision, waiver or other change to this Agreement shall be binding on either Bautex or Buyer unless agreed upon in writing by both parties. Any oral or written representation, warranty, course of dealing, or trade usage not specified herein shall not be binding on either Bautex or Buyer. The Laws of the State of Texas (excluding any application of its conflicts of law principles), and any applicable United States federal law, govern the interpretation and enforcement of this contract, and any dispute arising from or relating to this Agreement, or the relationship between Bautex and Buyer. Venue for all suits or arbitration shall be in Bexar County, Texas. All remedies set forth in this Agreement are cumulative, not exclusive, unless they are expressly stated to be exclusive remedies.