

# TERMS AND CONDITIONS FOR MATERIAL CONVERTING SERVICES

## 1. Applicability.

(a) These terms and conditions for services (these "**Terms**") are the only terms that govern the provision of material converting services by American Custom Converting, LLC, a Wisconsin limited liability company ("**ACC**"), to the individual identified as the customer ("**Customer**") on the accompanying order confirmation (the "**Order Confirmation**").

(b) The Order Confirmation 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. In the event of any conflict between these Terms and the Order Confirmation, these Terms shall govern.

(c) These Terms prevail over any of Customer's general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

2. Services. Service Provider shall provide the services to Customer as described in the Order Confirmation (the "**Services**") in accordance with these Terms.

3. Performance Dates. ACC shall use reasonable efforts to meet any performance dates specified in the Order Confirmation, and any such dates shall be estimates only.

4. Customer's Obligations. Customer shall:

(a) cooperate with ACC in all matters relating to the Services;

(b) respond promptly to any ACC request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for ACC to perform Services in accordance with the requirements of this Agreement;

(c) provide such customer materials or information as ACC 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

(d) 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.

5. Customer's Acts or Omissions. If ACC's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, ACC 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.

**6. Change Orders.**

(a) If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. ACC shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (i) the likely time required to implement the change;
- (ii) any necessary variations to the fees and other charges for the Services arising from the change;
- (iii) the likely effect of the change on the Services; and
- (iv) any other impact the change might have on the performance of this Agreement.

(b) Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 29.

(c) Notwithstanding Section 6(a) and Section 6(b), ACC may, from time to time, change the Services without the consent of Customer 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 Order Confirmation.

(d) ACC may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the Order Confirmation.

**7. Acceptance of Goods for Services Rendered; Nonconformity.**

Customer shall have the right to reject nonconforming goods for Services rendered for a period of thirty (30) days after the date of shipment. Customer's failure to give notice of any claim of nonconformity within thirty (30) days from the date of shipment shall constitute an unqualified acceptance of goods and a waiver by Customer of any and all claims with respect to such goods. Under no circumstances shall ACC be liable for nonconforming goods, defects in workmanship or sales credits for Services rendered after thirty (30) days from the date of shipment.

**8. Fees and Expenses; Payment Terms; Interest on Late Payments.**

(a) In consideration of the provision of the Services by ACC and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Order Confirmation.

(b) Unless otherwise agreed to upon in writing, Customer shall pay all invoiced amounts due to ACC within net thirty (30) days from the date of ACC's invoice. Customer shall make all payments hereunder in US dollars.

(c) In the event payments are not received by ACC within net thirty (30) from the date of ACC's invoice to Customer, ACC may:

- (i) charge interest on any such unpaid amounts at a rate of 1.50% per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and
- (ii) suspend performance for all Services until payment has been made in full.

**9. Shipping Costs & Taxes.** Unless otherwise expressly stated in the Order Confirmation, prices set forth in the Order Confirmation do not include any amounts for shipping or taxes. Customer shall be responsible for all shipping costs, as well as 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.

**10. Warehousing Fee.** ACC may allow Customer's materials, including materials procured by ACC on behalf of Customer, to be stored at ACC's plant before or after the Services are performed. Absent any other agreement existing between the parties with respect to warehousing, in the event any of the foregoing is stored at ACC's location for more than thirty (30) days prior to or after Services are performed, ACC may, in its sole discretion, impose upon Customer a reasonable warehousing fee. Customer acknowledges and agrees that Customer assumes all risk of loss with any such warehousing and shall keep adequate insurance coverage over the materials at all times while materials are stored at ACC's location. ACC shall not be liable for any loss or damage to Customer's materials stored at ACC's location unless such damage or loss is the result of ACC's grossly negligent or willful acts or omissions.

**11. 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 and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of ACC in the course of performing the Services (collectively, the "**Deliverables**"), except for any Confidential Information of Customer or customer materials, shall be owned by ACC. ACC hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, 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.

**12. Confidential Information.**

(a) All non-public, confidential or proprietary information of ACC, 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 ACC 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 the provision of the Services and this

Agreement is confidential, and shall not be disclosed or copied by Customer without the prior written consent of ACC. Confidential Information does not include information that is:

- (i) in the public domain;
- (ii) known to Customer at the time of disclosure; or
- (iii) rightfully obtained by Customer on a non-confidential basis from a third party.

(b) Customer agrees to use the Confidential Information only to make use of the Services and Deliverables.

(c) ACC shall be entitled to injunctive relief for any violation of this section.

### **13. Representation and Warranty.**

(a) ACC 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 and shall devote adequate resources to meet its obligations under this Agreement.

(b) ACC shall not be liable for a breach of the warranty set forth in Section 11(a) unless Customer gives written notice of the defective Services, reasonably described, to ACC within five (5) days of the time when Customer discovers or ought to have discovered that the Services were defective.

(c) Subject to Section 12(b), ACC shall, in its sole discretion, either:

- (i) repair or re-perform such Services (or the defective part); or
- (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) **THE REMEDIES SET FORTH IN SECTION 12(c) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND ACC'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12(a).**

**14. Disclaimer of Warranties. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 12(A) ABOVE, ACC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR END-PRODUCT LONGEVITY; OR (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.**

### **15. Limitation of Liability.**

(a) **IN NO EVENT SHALL ACC BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL 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 ACC 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 ACC'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT PAID OR PAYABLE TO ACC UNDER THE PURCHASE ORDER(S) FROM WHICH ACC'S ALLEGED LIABILITY ARISES.**

(c) ACC shall not be liable for any damage, defects or nonconformities with respect to any material provided by Customer to ACC for the purpose of ACC performing the Services.

(d) The limitation of liability set forth in Section 14(b) above shall not apply to (i) liability resulting from ACC's gross negligence or willful misconduct and (ii) death or bodily injury resulting from ACC's negligent acts or omissions.

**16. Controllable Waste.** In addition to the limitation of liability set forth in Section 14 above, ACC shall not be liable for controllable waste arising from ACC performing the Services unless the controllable waste exceeds five percent (5%), calculated on an annual basis. ACC reserves the right to adjust the controllable waste threshold on a case-by-case basis and shall provide commercially reasonable advance notice to Customer if ACC determines, in its sole discretion, if an adjustment is necessary. In the event any controllable waste exceeds the controllable waste threshold, ACC may provide a partial credit of the toll rate reflected in the Order Confirmation in ACC's sole discretion. ACC determines the applicability of partial credits on a case-by-case basis.

**17. Indemnification.** Customer shall indemnify, defend and hold harmless ACC, its members, directors, employees, agents, subsidiaries and other affiliates from and against any and all claims, damages, liabilities and expenses (including attorneys' fees) arising from any third-party claim arising from Customer's breach of any representation, warranty, covenant, agreement or obligation under this Agreement.

**18. Termination.** In addition to any remedies that may be provided under this Agreement, ACC 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.

**19. Waiver.** No waiver by ACC of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by ACC. 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.

**20. Force Majeure.** ACC 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 the reasonable control of ACC 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, 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, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of sixty (60) days, Customer shall be entitled to give notice in writing to ACC to terminate this Agreement.

**21. Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of ACC. Any purported assignment or delegation in violation of this Section 21 is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

**22. 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.

**23. 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.

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

**25. Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Wisconsin in each case located in Brown County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**26. 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 Order Confirmation 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), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**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: Confidentiality, Governing Law, Submission to Jurisdiction and Survival.

**29. Amendment and Modification.** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.