

**Clancey Design Distributor**  
**Terms and Conditions of Sale**  
*(Revised May 2023)*

1. Applicability.

(a) These terms and conditions of sale (these “**Terms**”) are the only terms that govern the sale of the goods (“**Goods**”) by RJR, Inc., d/b/a Clancey Company, a Kansas corporation (“**Seller**”), to the buyer (“**Buyer**”) named in the applicable sales confirmation or sales acknowledgement (the “**Sales Acknowledgement**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The applicable Sales Acknowledgement (together with these Terms, 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. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. 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 to the delivery point set forth in the Sales Acknowledgement (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within three (3) days of Seller’s written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(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.

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) The 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.

4. Shipping Terms. Seller shall make delivery in accordance with the shipping terms set forth on the Sales Acknowledgement, or as otherwise agreed to by Seller.

5. Title and Risk of Loss. Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Kansas Uniform Commercial Code.

6. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

7. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within three (3) 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 reasonably required by Seller. “**Nonconforming Goods**” means only product shipped that is different than identified in Buyer’s purchase order.

(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, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship the Nonconforming Goods to Seller’s facility as instructed by Seller. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Buyer are final, and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the “**Prices**”) set forth in the applicable quote delivered to Buyer by Seller.

(b) Unless otherwise expressly set forth in Seller’s quote or the Sales Acknowledgement, 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, and Buyer shall be responsible for all such charges, costs, and taxes.

(c) Cash discounts, if any, apply only the cost of the Goods, and not to taxes or delivery charges. No discounts will be allowed if full payment is not timely made by Buyer.

9. Payment Terms.

(a) Unless a shorter payment period is required by Seller in the Sales Acknowledgement, Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller’s invoice. Buyer shall make all payments hereunder pursuant to Seller’s payment instructions and in US dollars. ANY CLAIMS FOR ADJUSTMENT IN CONNECTION WITH AN INVOICE MUST BE PRESENTED IN WRITING TO SELLER WITHIN TEN (10) DAYS OF THE DATE OF THE INVOICE IN QUESTION.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 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 if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof.

(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.

10. Limited Warranty.

(a) Seller warrants to Buyer that for a period of 12 months from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will conform to the specifications set forth in the Sales Acknowledgement and will be free from material defects in material and workmanship.

(b) **EXCEPT FOR THE WARRANTY EXPRESSLY SET FORTH IN SECTION 10(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY IMPLIED UNDER THE UNIFORM COMMERCIAL CODE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) 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, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY IMPLIED UNDER THE UNIFORM COMMERCIAL CODE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) Seller shall not be liable for a breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or reasonably should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business pursuant to Seller's instructions; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) Seller shall not be liable for a breach of the warranty set forth in Section 10(a) 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.

(f) Subject to Section 10(d) and Section 10(e) 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) and Seller will cover the cost of the replacement part, plus a \$25 flat fee for labor per warranty claim, or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, return such Goods to Seller pursuant to Seller's instructions.

**(g) THE REMEDIES SET FORTH IN SECTION 10(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(A).**

11. Limitation of Liability.

**(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, 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 RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER GIVING RISE TO SUCH CLAIM.**

(c) The limitation of liability set forth in Sections 11(a) and 11(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

12. Compliance with Law; Export Regulation.

(a) 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 penalties on Goods.

(b) The Goods, including any documentation and related technical data included with, or contained in, such Goods may be subject to US export control laws and regulations, including the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any such Goods to any jurisdiction or country to which, or any party to whom, or for any use for which, the export, reexport, or release of any such Goods is prohibited by applicable law, regulation, or rule. Buyer shall be responsible for any breach of this Section by its, and its successors and permitted assigns, affiliates, employees, officers, directors, members, shareholders, customers, agents, distributors, resellers, or vendors.

13. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (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.

14. 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.

15. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, 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.

16. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party’s (“**Impacted Party**”) reasonable control, including, without limitation, the following force majeure events (“**Force Majeure Event(s)**”): (a) acts of God; (b) flood, fire, earthquake, explosion, pandemic or epidemic; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; and (g) other events beyond the reasonable control of the Impacted Party. The Impacted Party shall give reasonable notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

17. No Cancellation or Modification of Orders by Buyer. Buyer may not cancel or modify any purchase order, or delay releases of orders or Seller’s production or delivery of ordered Goods, without Seller’s prior written consent. The terms of any such canceled, modified or delayed purchase order shall be subject to Seller’s prior written consent and agreement to any additional or modified terms (including holding Seller harmless from any losses that Seller may incur due to such cancellation, modification or delay by Buyer.

18. Special Orders. If Goods are manufactured specifically for Buyer (and such Goods are not part of Seller’s standard inventory), then such Goods, when manufactured, are the sole property of Buyer (subject to Buyer’s full payment for such Goods and Seller’s security interest in the Goods to secure payment as set forth in Section 5) and may not be returned to Seller without Seller’s prior written consent. All costs related to any required tests, inspections or bonds related to such Goods shall be borne solely by Buyer.

19. Assignment. Buyer may 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.

20. 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.

21. 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.

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

23. 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 for the District of Kansas or the state courts of the State of Kansas in each case located in the Johnson County, Kansas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

24. 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 on the face of the Sales Acknowledgement 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), e-mail (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.

25. 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.

26. 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: Limitation of Liability, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.