

**RUSH-OVERLAND MANUFACTURING
TERMS AND CONDITIONS**

(1) **ACCEPTANCE-** These terms and conditions are incorporated, in their entirety, into the Purchase Order entered into by and between Rush-Overland Manufacturing (hereinafter “Manufacturer”) and the customer (hereinafter “Purchaser”) from the date that the Purchase Order is executed by the Purchaser. Upon Manufacturer’s acceptance of the Purchase Order by execution thereof, these terms and conditions shall be binding on Purchaser. All previous agreements, understandings and quotations are superseded by these terms and conditions. No modification of any of the terms and conditions herein shall be binding on Manufacturer unless such modification is agreed to in writing by an authorized representative of Manufacturer. “Manufacturer” as used herein shall be deemed to mean the Manufacturer as identified on the Purchase Order of which these terms and conditions are incorporated therein.

(2) **Delivery Dates-** Delivery Dates are based upon prompt receipt by Manufacturer of the down payment deposit (“Deposit) specified in the Purchase Order and any other information needed from Purchaser. Manufacturer shall use its best efforts to deliver the products set forth in the Purchase Order (hereinafter the “Equipment”) by the date designated in the Purchase Order (all delivery dates are estimates only and are not a contractual obligation of Manufacturer). Receipt of the Equipment by the Purchaser shall constitute a waiver of all claims of delay.

(3) **Terms-** Unless otherwise mutually agreed upon in writing, the Equipment is sold EX Works (Incoterm 2010) at Manufacturer’s factory. The terms of this sale shall be specified in the Purchase Order between Manufacturer and Purchaser, to be determined at the time of execution of the Purchase Order. All Deposits required in the Purchase Order or pursuant to these terms and conditions shall be non-refundable. Unless otherwise provided in a separate written agreement between both parties, payment in full shall be due when the Equipment is ready for delivery. No cash discounts are allowed. If, in the exclusive judgment of Manufacturer, the financial condition of Purchaser at any time does not justify the commencement or continuance of production on the Equipment of the terms specified herein, Manufacturer may, in addition to all other remedies it may have at law or equity, make a written demand for full or addition partial payment in advance, suspend its performance until such payment is made and cancel the contract if such payment is not received by Manufacturer within thirty (30) days after delivery in person or sending written notice of such demand to Purchaser. The sale price for the Equipment shall be payable in current funds of the United States of America. Purchaser shall pick up the Equipment within thirty (30) days after Purchaser has been notified by Manufacturer, in writing, that the Equipment is ready for delivery; Purchaser shall incur a late fee of ONE HUNDRED and NO/100 (\$100.00) per day for each day after the initial thirty (30) day period. All notices by Manufacturer to Purchaser may be by U.S. Mail, facsimile or email to the addresses/contacts set forth in the Purchase Order.

(4) **Taxes and Duty-** Any federal, state, local or duty or excise tax or tax arising out of the sale and/or Manufacturer of the Equipment is not included in the Purchase Order price, and will be an additional charge to be paid by Purchaser at the time of delivery of the Equipment.

(5) **Title and Ownership-** It is the intention that the Equipment be sold to Purchaser and that title to the same shall be acquired by Purchaser upon full payment for the Equipment and delivery of the Equipment to Purchaser from Manufacturer's premises. Manufacturer shall retain a purchase money security interest lien on each piece of Equipment, including without limitation, any accessories to such Equipment, proceeds from the sale thereof and any insurance proceeds related to the Equipment, until final payment thereof is made, as per the agreed terms, and any check or payment has fully cleared the payor bank.

(a) Any risk of loss or damage to the Equipment shall be borne by Purchaser upon receipt of the Equipment by Purchaser from Manufacturer's premises.

(b) IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR ANY LIQUIDATED DAMAGES, OR INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY NATURE.

(6) **Warranties-**

(a) Manufacturer warrants to Purchaser that the material and workmanship of the Equipment is of good quality and free of defects and the Equipment shall be of the kind and quality described in the specifications, and that it shall be suitable for performing only the work as set forth in Manufacturer's specifications. The Warranty Period shall be for a term of one (1) year; the Warranty Period will start upon delivery of the Equipment from Manufacturer's facility to Purchaser and conclude after one year unless agreed upon in a separate writing by Manufacturer.

(b) EXCEPT AS SPECIFICALLY PROVIDED IN PARAGRAPH (a) ABOVE, MANUFACTURER MAKES NO WARRANTY, EXPRESS OR IMPLIED, RELATING TO THE EQUIPMENT, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

(c) Manufacturer does not provide a separate warranty for parts or components not manufactured by Manufacturer. Equipment, parts and accessories made by other manufacturers are warranted only to the extent of the original manufacturer's warranty to Manufacturer, and if extendable, Manufacturer will extend such warranty to Purchaser.

(d) In the event of Manufacturer's breach of its warranty as provided in (a) above, Manufacturer's liability shall be solely to repair and replace the Equipment and in no event shall Manufacturer have any liability for any consequential, incidental or other special damages, including but not limited to damages or loss of profits that resulted from the failure of the Equipment or delay caused by its repair.

(e) All transportation costs for returning defective Equipment to Manufacturer shall be borne by Purchaser. All transportation costs of returning repaired or replaced products or Equipment to Purchaser shall be borne by Purchaser.

(f) This warranty shall not be in force unless: (i) Purchaser has paid all payments due to Manufacturer; (ii) Purchaser gives Manufacturer immediate notice of defective part or parts; (iii) Purchaser affords Manufacturer the opportunity to inspect the defective part or parts; (iv) the Equipment

is still the property of the original owner; (v) the parts or material are still part of the original installation operating under normal usage; and (vi) the Equipment and materials have been properly maintained and lubricated per factory specifications.

(g) The above warranty does not cover parts, which upon inspection, are determined by Manufacturer to have been subjected to misuse, neglect, alterations, accident, abuse, damage by fire, flood or other similar casualty.

(7) **Patents-** Manufacturer shall hold Purchaser harmless from any and all costs and damages which shall be recovered against Purchaser in any suit at law or in equity for any infringement of any Patent by reason of the use by Purchaser of the Equipment herein specified; provided and upon the express condition that the Equipment is used in the manner directed and exclusively for the purpose for which it is sold without any changes or modifications and was used in compliance with Manufacturer's plans and specifications, and upon further expressed condition that Purchaser shall immediately after service of the writ in any such suit at law or in equity notify Manufacturer in writing of the commencement of such suit, the names of the parties and the title of the Court and a copy of the pleadings and shall permit Manufacturer to defend same by its own counsel and at its own expense and to have exclusive control and management of the defense, and that Purchaser shall give Manufacturer all needed information, assistance and authority to enable Manufacturer to defend such suit.

(8) **Indemnification-** Purchaser agrees to indemnify Manufacturer, and to hold Manufacturer harmless from all costs and expenses incurred by Manufacturer, including, without limitation, costs of investigation, attorney's fees, amounts paid in settlement or satisfaction of claims, proceedings, or judgments, in connection with all claims and proceedings against Manufacturer based upon claimed defects in design for any item or items manufactured for Purchaser by Manufacturer to Purchaser's design and/or specifications.

(9) **Force Majeure-** In the event that the performance by Manufacturer of any of its obligations under the terms of this Agreement shall be interrupted or delayed by an act of God, by acts of war, riot, or civil commotion, or by an act of state, by strikes, fire, flood or by the occurrence of any other event beyond the control of the parties hereto including but not limited to Manufacturer's inability to obtain materials or supplies needed to manufacture the Equipment, Manufacturer shall be excused from such performance for such period of time as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated. Any such delayed performance, however, shall not in any way invalidate this contract or any part thereof.

(10) **Choice of Law-** It is expressly agreed and stipulated that this contract shall be deemed to have been made and performable in the County of Ector, in the State of Texas. All questions concerning the validity, interpretation or performance of any of its terms or provisions, or of any rights or obligations of the parties hereto, shall be governed by and resolved in accordance with the laws of the State of Texas.

(11) **Jurisdiction-** Purchaser irrevocably consents and voluntarily submits to personal jurisdiction of the courts located in Ector County, Texas and the United States District Court for the Western District of Texas, Midland-Odessa Division in any proceeding arising out of or relating to this contract and agrees that all claims raised in such proceedings shall be heard and determined by such court or courts.

(12) **Attorney's Fees-** If any legal action is brought by either of the parties hereto, it is expressly agreed that the prevailing party in such legal action shall be entitled to recover from the other party reasonable attorney's fees, court costs and expenses in addition to any other relief that may be awarded. For the purposes of this cause, the prevailing party is the party who obtains a net damage recovery or the party in whose favor final judgment is entered. In the event that declaratory or injunctive relief alone is granted, the court may determine which, if either, of the parties shall be considered to be the prevailing party. The amount of reasonable attorney's fees, court costs and expenses shall be determined by the court in the trial of such action or in separate action brought for that purpose. Attorney's fees, court costs and expenses awarded under the provisions of this paragraph shall be in addition to any other relief that may be awarded.

1. Be adjudicated a voluntary or involuntary bankrupt;
2. Institute or suffer to be instituted any proceeding for reorganization or rearrangement of its affairs;
3. Make an assignment of the benefit of creditors;
4. Become insolvent or have a receiver of its assets or property appointed;
5. Allow any money judgment against it to remain unsatisfied for a period of thirty (30) days or longer; or
6. Remain in default in the performance of any obligation or payment of any indebtedness under this agreement for a period of thirty (30) days or longer.