



Sterling Machinery Co.
"Unique in the Market Place"

Purchasing Terms and Conditions

1. **ENTIRE AGREEMENT.** The purchase order (the "PO" or "order") and these terms and conditions constitute the entire agreement (together, this "Agreement") between Sterling Machinery, Inc. ("Sterling") and the provider of the products or services identified in the PO (the "Provider") with respect to the product(s) (the "Product(s)") and/or services (the "Services") described in the PO, and no term or condition hereof may be amended, modified or waived except by a writing signed by an authorized representative of Sterling. Provider's acceptance of Sterling's offer to purchase Products and/or Services is expressly conditions on Provider's agreement to all of the terms and conditions set forth herein. Terms, if any, included on any Provider's invoices, acknowledgment forms or other documents shall not apply and are hereby voided. In addition to the other terms in this Agreement, this Agreement expressly includes all implied warranties and all of the buyer's remedies set forth in the Uniform Commercial Code.

2. **COMPENSATION.** If the PO is for Products, no additional charges of any kind other than those specified on the face of the order, or agreed to by Sterling in writing, including charges for packing, will be allowed or paid. If the PO is for fixed-price Services, payment shall not exceed the amount set forth in the PO. If the PO is for time and materials Services, payment shall not exceed the cap stated for hourly fees and the stated cost of materials. Provider shall be responsible for payment of all expenses not specified on the face of the PO or otherwise agreed in a writing signed by an authorized representative of Sterling. Provider's invoices shall make reference to the identification number set forth on the PO. In the case of Services, unless otherwise stated on the PO, Provider shall invoice Sterling each month until completion of the Services. Sterling shall pay each invoice net 60 days after receipt.

3. **CHANGES.** Sterling shall have the right at any time to make changes in the Order by written notice to Provider, and Provider agrees to comply with such changes. If such changes cause a material increase or decrease in Provider's costs or time of performance of this Order, Provider shall notify Sterling immediately and negotiate an adjustment.

4. **DELIVERY OF PRODUCTS.** Time and rate of deliveries are critical for the order and if Provider does not make deliveries as specified on the face of this order, Sterling reserves the right to cancel/and or purchase elsewhere and hold Provider accountable for all reasonable excess costs and expenses incurred by Sterling.

Furthermore, if any products or services are not delivered within the time specified in the order or within a reasonable time, if no time is so specified, or if Provider is not in compliance with any schedule or timetable developed by Sterling, Sterling, in addition to other remedies, shall have the right to refuse acceptance of such products or services and/or terminate the order.

5. **SHIPPING.** Sterling reserves the right to route all shipments. Delays in shipment shall be reported immediately by Provider to Sterling. Every package or other shipping unit, bill of lading, shipping memorandum and invoice must be marked with Sterling's Purchase Order Number. Provider's serial numbers must be shown on all shipping papers and invoices.

6. **DELIVERY/TITLE.** Unless otherwise agreed, delivery shall be f.o.b. point of destination and title shall pass to Sterling upon acceptance at the final delivery point. Risk of damages or loss following shipment and prior to acceptance by Sterling shall be the responsibility of Provider.

7. **RIGHT OF INSPECTION AND REJECTION.** Sterling reserves the right of inspection prior to final acceptance of the services or goods and such inspection and acceptance shall be at Sterling's premises by Sterling. Sterling or its customers may inspect goods at Provider's place of business but inspection by Sterling or its customers prior to delivery does not relieve Provider from responsibility of furnishing goods or services in strict compliance with specifications, nor preclude Sterling's subsequent rejection if the products or services fail to comply with Provider's warranties. At Sterling's election, Sterling may correct any non-conforming good(s) and service(s) at Provider's expense, replace any non-conforming or rejected goods if adequate assurances are not timely provided, hold any non-conforming or rejected good(s) at Provider's risk to cover, and/or return any rejected and non-conforming good(s) to Seller at Seller's expense. Payment by Sterling shall not be construed as constituting acceptance of good(s) or service(s) if these fail to comply with Provider's warranties. Inspection may involve sampling or testing, and Sterling's acknowledgment of delivery does not constitute final acceptance hereunder. Product supplied by Provider shall be received subject to Sterling's inspection and approval within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at Provider's expense. No material or equipment returned to Provider as defective shall be replaced except upon Sterling's formal authorization.

8. **PROVISION OF SERVICES.** Provider shall complete the Services in accordance with any schedule, and within any time, specified in the PO; provided, however, that Provider shall not be liable to Sterling for any delay caused by Sterling. Provider will determine the method, details and means of performing the Services, but must at all times observe Sterling's safety and security policies when performing Services at Sterling's premises. Provider is an independent contractor of Sterling and not an employee, agent, joint venture or partner of Sterling. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Sterling and Provider or employees or agents of Provider.

Sterling shall, however, be entitled to exercise a broad general power of supervision and control over the results of the work performed by Provider to ensure satisfactory performance. This power of supervision shall include the right to inspect and request modification of the scope of the PO.

9. WARRANTY. Provider warrants to Sterling that the Products will, at the time of delivery, conform to Sterling's then current documentation supplied with the Products. Provider further warrants to Sterling that the Products will be free from defects in material and workmanship for a period of one (1) year from the date of delivery to carrier (the "Warranty Period"). Provider will, at its sole option, repair or replace any Product or component part found by Sterling to be defective if notified, in writing within the Warranty Period, and the defective Product is returned to Provider prepaid. Sterling must first obtain shipping instructions from Provider prior to returning any defective Product under this warranty. All repaired/replaced Products or components are warranted for thirty (30) days or the remaining unexpired term of the original warranty, whichever is longer. Provider shall perform the Services diligently, professionally and in accordance with all applicable professional and industry standards. Provider shall perform the Services through the use of personnel and equipment appropriate for the type of Service to be provided and will use its best efforts in performing the Services. Sterling may inspect the results of Provider's efforts at reasonable intervals and will inform Provider if performance is unsatisfactory, in which event Provider agrees to correct deficiencies within a reasonable time to be agreed between Sterling and Provider.

10. INVOICES. All invoices shall be mailed to Sterling at its office as indicated on the face of the Order and will state Sterling's Purchase Order Number clearly on the Invoice. Invoice and duplicates shall be rendered for each order or for each shipment if more than one is made on an order. No invoice shall be delivered by Provider to any employee of Sterling. An itemized delivery ticket, bearing Sterling's Purchase Order Number as shown on the Order, must be left with the goods to insure their receipt. If delivery is made by carrier, an itemized delivery ticket must be attached to the package or other shipping unit. The payment discount period will date from receipt of the invoice and not from the date of the invoice. In case of errors on an invoice, the payment discount period will date from the receipt of corrected invoices. Provider shall use the lowest published freight rates and any excess transportation charges incurred, including any that deviate from the published tariff rates, are to be borne by the Provider.

11. PATENT INDEMNITY. Provider agrees to indemnify, save harmless and defend Sterling from and against any and all suits, claims, damages, costs, and attorney's fees arising out of or in connection with any infringement or claimed infringement of any United States patent, trademark or copyright in the manufacture, use or sale of the equipment or materials furnished under this Order. In case said equipment or material is in such suit, or in final adjudication elsewhere, held to constitute infringement, and the use thereof is enjoined, Provider shall, at its own expense, either procure for Sterling the right to continue using said equipment or material, or at the option of

Sterling either replace same with equally efficient noninfringing equipment or material, or modify it without impairing its efficiency so it becomes noninfringing, or remove said equipment or material and refund the purchase price and the transportation and installation costs thereof.

12. INDEMNITY AND INSURANCE. Provider shall defend, indemnify and hold harmless Sterling from any claims, suits, judgments, fees and costs (including attorney's fees) based on or arising out of the Provider's products, services and/or the resale or use of the products purchased hereunder including death, personal injury, or damage to property.

13. COMPLIANCE WITH LAWS. Provider shall (I) comply with all federal, state, local, and foreign laws, rules and regulations applicable to its obligations under this Order, and (II) furnish to HDA LLC any Information recoiled to enable HDA LLC to comply with such laws, rules, and regulations in its use of the Product(s) or Services.

14. CONFIDENTIALITY/TRADE SECRETS. All specifications, data and other information furnished by Sterling, or its agents, to Provider in connection with this order remain the exclusive intellectual property of Sterling and shall be treated by the Provider as proprietary and shall not be disclosed or used, outside the limitation of this order, without prior written approval of the President of Sterling. In addition, the purchase of the Provider's product does not authorize the Provider to use the name of or make reference to Sterling for any purpose in any releases for public or private dissemination, nor shall the Provider divulge or use in any advertisement or publication any specifications, data, or other information pertaining to or relating to this usage without prior written approval of the Director - Purchases of Sterling.

15. LAW GOVERNING: This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas, exclusive of the International Sales Convention and excluding conflicts of law and choice of law principles. The rights, duties and obligations described herein arose and are deemed performed in Polk County, Arkansas. The parties specifically agree that the venue for any dispute shall be the Circuit Court of Polk County, Arkansas or the United States District Court - Western District of Arkansas - Fort Smith Division.

16. SEVERABILITY. If any provision of the Agreement, or application thereof to any person or circumstance, is held to be illegal, invalid, or unenforceable for any reason, such illegality, invalidity, or unenforceable shall not affect any other provision of the Agreement that can be given effect in the absence of the illegal, invalid, or unenforceable provision of application. To this end, all provisions of this Agreement are declared to be severable.

17. CONFLICT MINERALS. With respect to any and all product or material delivered under the Purchase Order, Supplier warrants that such Goods will at no time contain any "conflict minerals" as such term is defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act, including, without limitation, columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives, or any other mineral or its derivatives determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of the Congo (DRC). Supplier will immediately notify Buyer if at any time the foregoing representation becomes inaccurate or incomplete.

ACCEPTED AND AGREED TO:

Sterling Machinery Company , Inc.

(Company Name)

BY: _____

BY: _____ (Print)

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____