

MASTER AGREEMENT PERFORMANCE PRO SUPPLY, LLC

1. Definitions. “Customer” means the Party identified on the Invoice and includes any of its representatives, agents, officers, employees or anyone signing this Master Agreement or otherwise accepting the Terms in Section 2 of this Master Agreement on its behalf. “Invoice” means any document issued by Performance describing the product provided to the Customer which includes a statement of the sum due for the Product regardless of format, heading, or document type. “Parties” means Performance and the Customer. “Party” means either Performance or the Customer. “Product” is the equipment and/or services identified on the Invoice, together with all replacements, repairs, additions, attachments and accessories.

2. Terms. Performance’s sale of its Products to the Customer is expressly conditioned upon the Customer’s agreement with each of the terms of this Master Agreement, the terms of the Credit Agreement (incorporated herein by reference), and any additional terms listed by Performance on the Invoice. Customer’s execution of this Master Agreement or its receipt of the Products shall constitute its acceptance and assent to each of the terms herein. Any reference in Customer’s purchase order or other Customer document to other terms that shall control this transaction are deemed to be “material changes” that Performance rejects and shall be void and without effect. Customer purchases the Products pursuant to this Master Agreement. Customer shall pay Performance the Purchase Price for the Product upon receipt of the Product.

3. Obligation, Cost, and Risk. ALL PRODUCTS ARE SHIPPED FOB SHIPPING POINT, UPON BEING LOADED AT PERFORMANCE’S LOCATION THE SALE IS DEEMED COMPLETE, AND ALL COST OF SHIPPING, AND RISK OF DAMAGE TO THE PRODUCTS PASSES TO THE CUSTOMER. SUBJECT TO THE FOLLOWING DELIVERY FEE SCHEDULE:

DELIVERY FEE SCHEDULE	
Order Amount	Delivery Fee
\$0.01 to \$999.99	\$50.00
\$1,000 – \$3,499.99	\$25.00
\$3,500 or greater	\$0.00

4. Inspection. Customer shall inspect the Products promptly upon delivery and shall object due to nonconformance or damage to Product not later than three (3) days after delivery. Any objection must be in writing and received by Performance, not later than three (3) days after delivery; if an objection is made by email, receipt must be confirmed by the Customer.

5. Cancellation and Returns. A Customer may cancel their purchase up to forty-eight (48) hours prior to delivery. Any order that is cancelled less than forty-eight (48) hours prior to delivery will be charged an administrative restocking fee of twenty-five percent (25%) of the purchase price. If a Customer has timely objected to the Products, they may request to return the product to Performance. Before returning any Product, the Customer must obtain Performance’s written permission. Performance will provide shipping instructions and a return authorization number. A credit, less the cost of shipping and a One Hundred Dollar (\$100) handling charge, to the Customer will be allowed upon return of the Product. THERE SHALL BE NO RETURNS ON SPECIAL ORDER MATERIALS AS DEFINED IN SECTION 6. ALL RETURNS ARE FOB DESTINATION.

6. Custom Products and Return of Custom Products. Buyer must provide to Performance all requirements for goods to be specially manufactured (“Special Order Materials”) in clear legible type or writing, including any figures or drawings associated with the Special Order Materials; all specifications must include a reasonably acceptable margin of error. Under no circumstance will Performance undertake the special manufacture for a Customer if the required information is not provided, or is illegible or otherwise indecipherable. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT SPECIAL ORDER MATERIALS ARE NOT SUITABLE FOR SALE TO OTHERS OR IN THE ORDINARY COURSE OF PERFORMANCE’S BUSINESS, AND PERFORMANCE SHALL NOT ACCEPT RETURNS OF ANY SPECIAL ORDER MATERIALS.

7. Force Majeure. Performance or Customer may terminate, suspend, or delay delivery of the Products due to a Force Majeure Event. For the purposes of this Master Agreement, a Force Majeure Event includes, but is not limited to: acts of governments; acts of nature; fire; explosion; typhoon; flood; earthquake; tide; lightning; war; or, any event that is beyond Performance’s or the Customer’s reasonable control and cannot be prevented with reasonable care. The affected Party who is disclaiming liability due to its failure to fulfill this Agreement by Force Majeure shall inform the other Party, promptly and without delay. A Force Majeure Event shall not, in any circumstance, excuse the Customer of its duty to make a payment when due when the Products are available.

8. No Warranties. PERFORMANCE DOES NOT DESIGN OR MANUFACTURE ANY OF THE PRODUCTS AND IS NOT THE AGENT OF ANY MANUFACTURER OF THE PRODUCTS. FURTHER, IT IS THE INTENT OF THIS MASTER AGREEMENT THAT THE ONLY WARRANTIES AVAILABLE TO THE CUSTOMER ARE THOSE OFFERED OR PROVIDED BY THE MANUFACTURER OF THE PRODUCT. PERFORMANCE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND THEIR DURABILITY, CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. THE CUSTOMER ASSUMES ALL RISKS ASSOCIATED WITH THE PRODUCT AND RELEASES PERFORMANCE FROM ALL LIABILITIES AND DAMAGES (INCLUDING LOST PROFITS, PERSONAL INJURY, AND SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES) IN ANY WAY CONNECTED WITH THE PRODUCTS AND THE PRODUCTS’ OPERATION, USE OR ANY DEFECT OR FAILURE THEREOF OR A BREACH OF PERFORMANCE’S OBLIGATIONS HEREIN.

9. Release and Indemnification. TO THE EXTENT PERMITTED BY LAW, CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD PERFORMANCE HARMLESS FROM AND AGAINST ALL LIABILITIES, CLAIMS, LOSSES, DAMAGES, AND EXPENSES (INCLUDING ATTORNEY’S AND LEGAL FEES AND EXPENSES) HOWEVER ARISING OR INCURRED, RELATED TO ANY INCIDENT, DAMAGE TO PROPERTY, INJURY OR DEATH OF ANY PERSON, CONTAMINATION OR ALLEGED CONTAMINATION, OR VIOLATION OF LAW OR REGULATION CAUSED BY OR CONNECTED WITH THE (A) USE, POSSESSION OR CONTROL OF THE PRODUCTS OR (B) A BREACH OF THIS MASTER AGREEMENT, WHETHER OR NOT CAUSED IN WHOLE OR IN PART BY NEGLIGENCE OR OTHER FAULT OF PERFORMANCE AND ANY OF THE FOREGOING ARISING OR IMPOSED IN ACCORDANCE WITH THE DOCTRINE OF STRICT OR ABSOLUTE LIABILITY. CUSTOMER ALSO AGREES TO WAIVE ITS WORKERS’ COMPENSATION IMMUNITY, TO THE EXTENT APPLICABLE. CUSTOMER’S OBLIGATIONS UNDER THIS SECTION 9 SHALL

SURVIVE THE EXPIRATION OR TERMINATION OF THIS MASTER AGREEMENT. ALL OF THE CUSTOMER’S INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL BE JOINT AND SEVERAL.

10. Payment. Payment is due and owing upon delivery of the Products, and Customer shall pay all amounts due, without any offsets, upon receipt of the Products. Customer must notify Performance in writing of any disputed amounts, including credit card charges, within three (3) days of delivery of the Products or Customer shall be deemed to have irrevocably waived its right to dispute such amounts. At Performance’s sole discretion, any credit account with a delinquent balance may be placed on a cash basis, deposits may be required, and the future delivery of Products may be withheld. Due to the difficulty in fixing actual damages caused by late payment, if an account is delinquent the Customer will be assessed interest at the rate of eighteen percent (18%), or the maximum otherwise allowable at law, per month on all invoices not paid when due, until paid in full. Customer shall pay a fee of \$75 for each check returned for lack of sufficient funds to compensate Performance for the administrative costs of processing missed payment. Customer agrees that if a credit card is presented to pay for charges or to guarantee payment, Customer authorizes Performance to charge the credit card at time of purchase all amounts shown on the invoice presented and charges subsequently incurred by Customer.

11. Default. Performance, in its sole discretion, may declare a Customer to be in default if, at any time, Performance deems itself insecure or if the Customer: (a) fails to pay sums when due; (b) breaches any Section of this Master Agreement; (c) becomes a debtor in a bankruptcy proceeding, goes into receivership, takes protection from its creditors under any insolvency legislation, ceases to carry on business, or has its assets seized by any creditor; or, (d) is in default under any other Master Agreement with Performance. If a Customer default occurs, Performance shall have, in addition to all other rights and remedies, the right to repossess the Product without judicial process or prior notice. Customer shall pay all of Performance’s costs, including reasonable costs of collection, court costs, attorneys and legal fees, which are incurred in exercising any of its rights or remedies herein. The use of false identification to obtain Products may be considered theft or Fraud, subject to criminal prosecution and civil liability, pursuant to applicable laws. Performance shall not be liable due to seizure of Products by order of any governmental authority. CUSTOMER WAIVES ANY RIGHT OF ACTION AGAINST PERFORMANCE FOR SUCH REPOSSESSION.

12. Limitation of Liability. PERFORMANCE SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES TO THE CUSTOMER RESULTING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POTENTIAL FOR SUCH LOSS OR DAMAGE INCLUDING ANY LIABILITY ARISING FROM PERFORMANCE’S, OR ANY THIRD PARTY’S COMPARATIVE, CONCURRENT, CONTRIBUTORY, NEGLIGENCE OR THAT ARISES AS A RESULT OF ANY STRICT OR ABSOLUTE LIABILITY. IN NO EVENT SHALL ANY DAMAGES EXCEED THE TOTAL CHARGES PAID BY CUSTOMER UNDER THIS MASTER AGREEMENT.

13. Waiver of Jury Trial; Waiver of Class Action. CUSTOMER FREELY, KNOWINGLY, AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY FOR ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO THIS MASTER AGREEMENT. ADDITIONALLY, CUSTOMER WAIVES THE RIGHT TO LITIGATE, ARBITRATE, OR OTHERWISE RESOLVE THIS DISPUTE AS A CLASS ACTION, EITHER AS MEMBER OR REPRESENTATIVE OF THE CLASS. EACH WAIVER IN THIS SECTION 13, IS A MATERIAL PROVISION FOR INDUCEMENT TO ENTERING INTO THIS MASTER AGREEMENT.

14. Compliance with Export and Import Laws. Removal of the Product from the United States (“U.S.”) is prohibited under this Master Agreement. If Customer desires or causes the transport of the Product outside of the U.S., Customer must (a) obtain Performance’s consent prior to taking such action, and (b) execute an amendment to this Master Agreement, which amendment is incorporated herein. If Customer exports or re-exports without complying with the foregoing, Customer agrees that (i) the Product is subject to and must comply with all applicable export laws, including but not limited to the Export Administration Regulations, and (ii) Customer is responsible for: (A) determining whether and obtaining, if necessary, export or re-export licenses or other authorizations as required prior to exporting or re-exporting the Product; (B) obtaining any required documentation necessary for exportation or importation of the Product; and, (C) ensuring no unauthorized transfers or diversions of the Product occur. Refer to www.bis.doc.gov for information.

15. Governing Law and Severability. The Parties agree that this Master Agreement, including any related tort claims, shall be governed by the laws of Oregon in the courts of Washington County, without giving effect to any conflicts of law principles. If any Section of this Master Agreement is prohibited by any law, such Section shall be excluded from this Master Agreement without invalidating any other remaining Sections.

16. Miscellaneous. This Master Agreement, together with the Credit Agreement and any other agreement incorporated herein by reference, constitutes the entire agreement of the Parties regarding the Product and may not be modified except by written amendment signed by the Parties. The Customer’s obligations hereunder shall survive the termination of this Master Agreement. Headings are for convenience only. To the extent that any terms in this Master Agreement, the Credit Agreement, Invoice or any other agreement or amendment incorporated herein conflict, the Parties agree that the more specific terms control. A copy of this Master Agreement shall be valid as the original. Any failure by Performance to insist upon strict performance of any Section of this Master Agreement shall not be construed as a waiver of the right to demand strict performance in the future. The Customer represents that this Master Agreement constitutes a legal, valid and binding obligation of Customer, enforceable in accordance with its terms. This Master Agreement may be amended or changed from time to time without notice, please review all the terms www.PerformanceProSupply.com. Except for the notice for returns described in Section 4 of this Master Agreement, all notices shall be mailed to Performance at: 13939 SW Tualatin Sherwood Rd, Sherwood, Oregon 97140. Any Section 4 notice given by email shall be emailed to: ryanr@performanceprosupply.com