

RMS ROLLER-GRINDER TERMS AND CONDITIONS OF SALE

1. Governing Terms. These Terms and Conditions of Sale (“Terms”) apply to and govern the sale by RMS Roller-Grinder (“RMS”) of all products (“Products”) that RMS agrees to sell to Buyer and the performance by RMS of all services (“Services”) that RMS agrees to furnish to Buyer, except as otherwise stated in RMS’s Proposal or Sales Order or as otherwise agreed in a written agreement signed by RMS. RMS offers to sell Products and/or Services solely pursuant to these Terms and any acceptance is expressly limited to these Terms. Any additional or different terms proposed by Buyer in any offer, acceptance, confirmation or other document are rejected by RMS and do not bind the parties.

2. Prices. The prices for Products and Services are those contained in RMS’s Proposal or Sales Order or, if there is no Proposal or Sales Order, in RMS’s price list. If the price of fuel, materials or other production items increase, RMS may impose a surcharge for affected Products and Services. Unless the parties otherwise agree in writing, the prices for the Products and Services do not include any taxes, customs duties, brokerage fees, or costs of freight, shipping, packaging, labeling, storage or insurance, which will be paid by Buyer in addition to the prices for Products and Services.

3. Payment. All payments for Products and Services are payable on the terms stated in RMS’s Proposal or Sales Order. If a Proposal or Sales Order does not specify payment terms, all payments for Products and Services are due 30 days from the date of invoice, unless otherwise agreed in writing by RMS. At the request of RMS, Buyer will provide financial information for RMS to assess the credit risk of Buyer. RMS, at any time, may change or withdraw Buyer’s credit or impose security or other arrangements to secure Buyer’s payment. All amounts past due will incur a late charge of 1.5% per month. To secure payment by Buyer, Buyer grants RMS a first priority security interest in all Products sold to Buyer until the date the invoiced amount for such Products has been paid.

4. Title; Delivery. Unless otherwise agreed in a written agreement signed by RMS, all Products are sold FOB, Freight Collect, at RMS’s facility. Title to, and risk of loss of, Products will pass to RMS upon delivery to the carrier at RMS’s facility. RMS will use commercially reasonable efforts to deliver Products or Services on or before the scheduled shipping/delivery date thereof.

5. Inspection. Buyer will have three days after Buyer’s receipt of Products or Services to inspect the Products or Services. Buyer will be deemed to have accepted the Products or Services unless Buyer notifies RMS in writing of any defect within such three-day period.

6. Cancellation. Buyer may not cancel or change an order for Products or Services, except upon the written consent of RMS. If Buyer cancels or changes an order for Products or Services, Buyer will reimburse RMS for all work-in-process, materials, subcontractor costs, vendor costs, internal labor costs, and any other costs of RMS associated with the cancelled or changed order, and will be liable to RMS for lost profits and any other consequential and other damages incurred by RMS as a result of such cancellation or change.

7. Breach. Any one of the following acts by Buyer will be a material breach of these Terms by Buyer: (a) Buyer fails to pay for any Products or Services when due; (b) Buyer fails to accept conforming Products or Services; (c) the filing of a voluntary or involuntary petition in

bankruptcy against Buyer, Buyer’s insolvency, or an assignment for the benefit of creditors of Buyer; or (d) Buyer’s failure to provide adequate assurance of performance within ten (10) days after a justified demand by RMS. In the event of a breach, RMS, in addition to all other rights or remedies hereunder or at law or in equity and without liability to Buyer, may terminate its obligations by written notice to Buyer. Buyer will pay all costs, including reasonable attorneys’ fees, incurred by RMS as a result of Buyer’s breach.

8. Limited Warranty. RMS warrants its Products as described in this section.

For a new mill, RMS provides a one year limited warranty, commencing on the date of delivery of the mill to Buyer pursuant to Section 4 above. This warranty covers the frame, motors, motor mounts, rolls, shafts, bearings, gear boxes, pulleys, fine adjustment assembly, slopes, belt guards, feed roll box, feed roll shaft and idler shaft, warranting that such items will be free from defect in material and workmanship under proper use, service and conditions. This warranty excludes belts, motor mount threaded rods and nuts, and other items not listed in the preceding sentence.

For a roll exchange, RMS provides a 30-day limited warranty, commencing on the date of completion of the roll exchange. This warranty covers the rolls, roll shafts and bearings, warranting that such items will be free from defect in material and workmanship under proper use, service and conditions. This warranty excludes any items not listed in the preceding sentence.

The new mill warranty and roll exchange warranty described above are voided and do not apply if a defect is caused by inadequate maintenance, accident, misuse, neglect, alteration, improper installation or repair, service or repair by someone other than RMS, inadequate machine protection, normal wear and tear, use contrary to any specifications or instructions of RMS, or RMS’s compliance with any designs, specifications or instructions of Buyer.

In the event a Product fails to conform to the new mill warranty or roll exchange warranty described above during the warranty period, RMS will furnish and install a replacement part to replace the defective part, provided however Buyer will reimburse RMS for all labor and travel expenses of RMS, including per diem and hotel, incurred by RMS in installing the replacement part. Except as described in this section above, all Products and Services sold by RMS are sold “AS IS” and with no warranty.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY CONSTITUTES RMS’S SOLE LIABILITY AND OBLIGATION, AND BUYER’S SOLE REMEDY, FOR ANY BREACH OF WARRANTY OR OTHER NONCONFORMITY OF PRODUCTS. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. RMS MAKES NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. RMS DOES NOT EXTEND THIS WARRANTY, AND BUYER MAY NOT TRANSFER IT, TO ANY THIRD PARTY.

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9. Limitation of Liability. RMS WILL IN NO EVENT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, WHETHER IN AN ACTION BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, ARISING FROM OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREUNDER, EVEN IF RMS KNEW OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT WILL RMS'S TOTAL LIABILITY ARISING FROM OR RELATED TO THE TRANSACTIONS HEREUNDER (INCLUDING ANY WARRANTY CLAIMS), WHETHER BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, EXCEED THE TOTAL AMOUNT BUYER PAID TO RMS FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT.

10. Acknowledgment. Buyer acknowledges that RMS has set its prices and fees, and has agreed to sell Products and Services to Buyer, in reliance on the limitations of liability, disclaimer of warranties and exclusive remedies set forth in these Terms, and that such provisions form an essential basis of the bargain between the parties, without which RMS would not have agreed to sell Products and Services to Buyer.

11. Indemnity. Buyer will defend, indemnify and hold harmless Seller and its agents, officers, directors and employees from and against any losses, damages, claims, liabilities and expenses, including attorneys' fees, arising from or related to Buyer's or Buyer's customers' purchase or use of Products or Services, except in the event such losses, damages, claims, liabilities or expenses are caused solely by a breach of RMS's warranty under Section 8 above, in which case RMS's liability, if any, will be only to Buyer and will be limited as set forth in Section 9.

12. Software. To the extent any Products or Services contain any software, the following terms apply: (a) RMS or RMS's licensor retains full ownership, including all patents, copyrights, trade secrets, trademarks and other intellectual property rights, in such software; (b) RMS grants to Buyer a non-exclusive, nontransferable, non-sublicensable, limited license to (i) use internally such software solely in connection with a Product, and (ii) distribute such software that is embedded in a Product (in machine code only) solely as programmed in the Product. Buyer will not engage in unauthorized use or disclosure of software, including any reverse engineering, disassembling, decompiling, copying, modifying, selling or otherwise exploiting the software.

13. Intellectual Property. All products, designs, devices, software, firmware, documents, data, processes, methods and other items that are designed, developed or produced by RMS in connection with any Products or Services are the sole property of RMS and are not "works made for hire" or "commissioned works." RMS retains all patents, copyrights, trade secrets and other intellectual property rights with respect to any design, process, manufacturing and other technologies used in or resulting from the development or production of Products or

Services. Neither Buyer nor any third party will have any right or license in or to any patent, copyright, trade secret or other intellectual property right not expressly granted by RMS in these Terms.

14. Confidential Information. All information Buyer obtains from RMS that Buyer knows or should know is confidential to RMS, including pricing and trade secret information, will remain RMS's confidential information. Buyer may not disclose such information to any third party.

15. Legal Compliance. Buyer will comply with all applicable laws, regulations and administrative rules governing the purchase and sale of Products, including export and import laws.

16. Assignment. Buyer may not assign any of its rights or delegate any of its obligations under these Terms, whether voluntarily, by operation of law or otherwise, without RMS's prior written consent, and any purported assignment or delegation without consent will be null and void. In the event Buyer is a corporation or other legal entity, a prohibited assignment will be deemed to have occurred upon the transfer of a majority of shares or other ownership interests in Buyer, whether such transfer takes place in one transfer or successive transfers over time. RMS may assign its rights and/or delegate its obligations under these Terms upon written notice to Buyer. Subject to the foregoing, these Terms will bind each party and its respective successors and permitted assigns.

17. Force Majeure. RMS will not be liable for any delay or failure by RMS to furnish Products or Services due to causes beyond its control, such as acts of God, fires, epidemics, floods, riots, wars, terrorism, labor disputes, governmental actions or the inability to obtain sufficient materials, labor, components, energy, services, facilities or transportation on commercially reasonable terms.

18. Waiver. RMS's waiver of any right it may have or any default by Buyer will not be a continuing waiver of such right or default or a waiver of any other right RMS may have under these Terms. No waiver by RMS will be effective except pursuant to a writing signed by RMS.

19. Governing Law; Venue. The laws of South Dakota will govern the validity, performance and construction of these Terms and any disputes arising from or relating to these Terms or the transactions contemplated hereunder. All disputes will be subject to the exclusive jurisdiction of the state or federal courts in Lincoln County, South Dakota, and Buyer consents to the personal and exclusive jurisdiction and venue of these courts.

20. Entire Agreement; Amendment. These Terms constitute the entire agreement between Buyer and RMS with regard to the Products or Services and expressly supersede and replace any prior or contemporaneous agreements relating thereto. These Terms may not be superseded, cancelled or amended except in a writing signed by each party. No other act, course of dealing, course of performance or usage of trade will supersede, cancel, modify or amend these Terms. If any provision of these Terms is determined to be invalid or unenforceable, such provision will be enforced to the extent possible and the remaining provisions will remain in full force and effect.