

**NOTICE:** This transaction, and all documents pertaining to it, including any quotation, proposal, order confirmation, order acceptance or invoice (Collectively, "Sales Documents") of Bihl+Wiedemann USA, Inc. ("Seller"), is subject to and conditioned upon these terms and conditions of sale ("Terms") and these terms are incorporated into and part of all sales documents.

## 1. Order Process; Acceptance; Additional or Conflicting Terms.

(a) All sales of products, equipment, parts and any other goods sold by Seller (individually, "Product" and collectively, "Products") and any services of Seller are contracts entered into in North Carolina and then only in accordance with the Sales Documents.

(b) Seller shall sell Products to Buyer in the quantities and at the times set forth in the Sales Documents. Buyer may order Products or services by submitting written purchase orders (each, a "Purchase Order") that contain the Product(s), quantity per Product, services and requested delivery date. All orders submitted to Seller for Products, whether via Purchase Order or otherwise, are subject to written acceptance by Seller and only terms in the Sales Documents shall apply. No orders are binding upon Seller until so accepted. Seller's acceptance may be in writing (such as via an order confirmation), including via email, or by delivery of the Products or services to Buyer.

(c) Every contract between Buyer and Seller for the sale of Products and services shall be governed by the terms contained in the Sales Documents (the "Contract"). In no event shall Buyer's terms apply to, nor shall Buyer's proposed additional or different terms modify, the Contract unless Seller expressly includes the proposed terms in a Contract. Seller hereby objects to and rejects any additional or different terms or conditions proposed by Buyer or contained in any Purchase Order, commercial document or other correspondence from Buyer, regardless of any knowledge Seller may have of such terms, and such terms shall not bind Seller. If any of these Terms conflict with Seller's Sales Documents, the specific terms stated in the Sales Document shall prevail over these Terms. The applicable terms of the latest Sales Documents shall control over such terms in any prior Sales Documents. No other terms or changes, modifications, amendments or waivers of any terms in a Contract shall apply to Seller unless in writing and signed by an authorized officer of Seller.

(d) Buyer may not cancel or change a Contract except with the prior written consent of Seller. Seller may change a Sales Document at any time to correct mathematical or clerical errors.

## 2. Prices; Payment.

(a) All prices will be as specified by Seller in its Sales Documents. If no price has been specified in the Sales Document, the price will be Seller's standard price in its catalogs or price lists in effect at the time of delivery. All prices from Seller must be in writing and may be changed at any time without notice.

(b) The price does not include any sales, use, personal property, excise, transfer or other tax, nor any duties or assessment, related to the Products or their purchase and

sale which may be imposed by any governmental authority, all of which shall be the obligation of, and paid by, Buyer. In the event that Seller pays any such tax, duty or assessment, Buyer shall reimburse Seller in accordance with the terms of Section 2(c). Buyer is responsible for obtaining and providing to Seller any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability.

(c) Unless expressly specified otherwise in the Sales Documents, Buyer shall pay all amounts due in full, and without deduction or setoff within thirty (30) days after the date of the invoice. The date of payment will be the date Seller receives payment in full. If at any time, in its sole judgment, Seller has any doubt as to Buyer's financial responsibility, Seller may decline to make shipments, except upon receipt of a deposit or other satisfactory security or cash before shipment.

(d) If Buyer fails to make any payments when due, then (i) interest shall accrue from the date the payment was due until payment is received in full at the lower of 1.5% per month or the maximum amount allowed by applicable law, (ii) Buyer shall pay Seller's reasonable attorneys' fees and other costs of collection of any past due amounts, and (iii) Seller may, at its sole discretion, take any of the following actions: suspend performance; terminate a Contract for default; require Buyer to pay the full Contract price; and take any other actions or pursue any other remedies under applicable law. Failure by Seller to charge interest on late payments or to exercise its right to suspend its performance shall not be construed as a waiver of any other legal or equitable remedies.

## 3. Termination.

Without limiting Seller's other rights and remedies available under applicable law, Seller may suspend or terminate performance and delivery, if: (a) Buyer fails to timely pay any purchase price, fees or charges as and when due; (b) Buyer fails to perform or observe any other obligations under the Sales Documents or under other existing or future contracts between Seller and Buyer; (c) there is a change in the control or management of Buyer; (d) Buyer ceases to conduct its operation in the normal course of business; (e) Buyer becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; or (f) Buyer makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Buyer's property.

## 4. Delivery.

Unless otherwise stated in Seller's order confirmation, all deliveries of Products are FOB-Origin (Incoterms 2010) Seller's location in Charlotte, North Carolina or such other location as designated by Seller. The prices do not include any transportation, packaging or installation costs. Seller may make partial deliveries. Notwithstanding any

requested delivery dates by Buyer, the delivery date in Seller's order confirmation shall control. Any shipping or delivery schedule, quotation, forecast or commitment is only an estimate and Seller will not be liable for any delay or failure to deliver all or any part of any order for any reason. Seller shall not be responsible for any damage to the Products caused by a carrier and Buyer's sole recourse for such damage shall be against the carrier.

## 5. Acceptance; Returned Products.

Within fifteen (15) days after delivery of Products, Buyer must give written notice to Seller of any claim by Buyer based upon the condition, quantity or grade of the Products sold or services provided, and the notice must indicate the basis of the claim in detail. Buyer's failure to comply with this Section shall constitute irrevocable acceptance by Buyer of the Products delivered or services provided and shall bind Buyer to pay to Seller the full price of such Products or services. Products sold shall not be returned without Seller's prior written consent and then only in accordance with Seller's then return policies (for example, a restocking fee may apply and Seller will not pay the transportation charges for any returns).

## 6. Limited Warranty.

(a) Subject to these Terms, Seller warrants that at the time of delivery the Products will be free from defects in material and workmanship consistent with Seller's published specifications and services will have been performed in a workmanlike manner ("Limited Warranty"). Any warranty claim must be made within twelve (12) months from the date of delivery for Products and within ninety (90) days for services ("Warranty Period") and according to these Terms. The Limited Warranty is limited to the Buyer only and is non-transferable. Buyer makes the decision on the selection and use of the Products and the Products' suitability for use, and Buyer is solely responsible for proper selection and application of the Products.

(b) Any depictions, projections, diagrams, illustrations and other descriptions or other information from Seller or its affiliates, applicable to Products, services or a Contract, whether included in catalogs or otherwise, are descriptions or approximations only, and do not constitute any specifications, representations, warranties, or guarantees, implicitly or explicitly.

(c) EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY PROVIDED IN SECTION 6(a) ABOVE, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS OR SERVICES. AND SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

(d) No employee, dealer, distributor, sales representative, or any other person or entity is authorized to offer any different or additional warranties or remedies, or to change

the Limited Warranty, without the signature of an authorized officer of Seller.

## 7. Limited Warranty Exclusions.

The Limited Warranty does not cover: (i) damage to Products during or after delivery; (ii) normal wear and tear or items that are expendable; (iii) operator error, (iv) use under circumstances exceeding Seller's specifications or limitations or contrary to any instructions or information from Seller (including those contained in Seller's operating or maintenance manuals as supplemented from time to time by Seller); (v) unauthorized or improper installation, repair, modification or alteration; (vi) use of non-original spare parts or components; (vii) failure to provide reasonable and necessary maintenance; (viii) improper storage; (ix) corrosion, erosion, abrasion or similar causes; and (x) accidents.

## 8. Buyer's Limited Warranty Claims.

(a) Buyer must inspect and test the Products for any alleged non-conformities prior to the Products' use. The Limited Warranty is conditioned upon Buyer following the claims process then in effect, which Seller may change in its discretion.

(b) Buyer shall timely give Seller written notice of any Products or services which Buyer alleges do not conform to the Limited Warranty, specifying the alleged non-conformities (each notice, a "Warranty Claim"). Buyer agrees to follow Seller's Warranty Claims process, which may include obtaining from Seller a return authorization number in order to make a Warranty Claim. Buyer must make any Warranty Claim within a reasonable time after it arises, and in any event within thirty (30) days after the end of the Warranty Period applicable to Products or services, and failure to do so shall void the Limited Warranty. If Seller requests it, Buyer shall return, at its expense, any alleged non-conforming Product to a location designated by Seller for Seller to verify the claimed defect. Seller shall have a reasonable opportunity to inspect the product or part thereof to determine whether it meets the Limited Warranty.

(c) For any Products which Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, shall be, at Seller's choice, to either repair or replace such non-conforming Product or, at the sole option of Seller, to refund to Buyer the price Buyer paid for such non-conforming Products. Seller does not cover the cost to return non-conforming Products to Buyer.

(d) If the inspection of the Product or part thereof does not disclose any failure to conform to the Limited Warranty, Seller will make repairs at a reasonable charge, which charges may include the cost of parts, labor and transportation, and the Buyer will be responsible for paying for all such charges and the cost to ship the Product back to the Buyer.

(e) For any services which Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, shall be, at Seller's choice, to either correct or repeat such

services or, at the sole option of Seller, to refund to Buyer the price Buyer paid for such non-conforming services.

## 9. Limitations; Exclusions.

(a) SELLER'S MAXIMUM AGGREGATE LIABILITY UNDER A CONTRACT OR WITH RESPECT TO THE PRODUCTS OR SERVICES OR THEIR USE (OR INABILITY TO USE), WHETHER IN WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT BUYER PAID TO SELLER FOR THE PARTICULAR PRODUCTS OR SERVICE AT ISSUE.

(b) Seller is not responsible for any injury or damage resulting from the use or application of the Products or services, alone or in conjunction with other products.

(c) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE THEORY OF RECOVERY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 10. Indemnity.

Buyer agrees to indemnify, defend and hold harmless Seller, its officers, directors, its employees and agents from any and all claims, actions, suits, damages, liabilities, costs, obligations, and expenses (including, without limitation, attorneys' fees) arising from or relating to (i) selection, application, use or incorporation of Products, (ii) any processing or modification of Products in any manner by Buyer, its employees, agents or customers, (iii) violation, misappropriation, or infringement of any patent, trademark, copyright or other intellectual property rights of any person or entity related to compliance with Buyer's design, specifications or instructions or related to Buyer's use of a Product with other goods, (iv) use of a Product or services exceeding Seller's specifications, limitations or recommendations, (v) any breach of warranty or misrepresentation (express or implied) made by Buyer, its employees or agents, and (vi) any violation of law or regulation, intentional or negligent act, or misrepresentation by Buyer, its employees or agents. At Seller's request, Buyer shall, at Buyer's expense, defend Seller, its affiliates and their respective shareholders, directors, officers, employees and agents against all such claims.

## 11. Insurance.

Buyer shall maintain commercial general liability, personal injury and property damage insurance policies, including wrongful death coverage, in reasonable amounts consistent with industry standards with a nationally recognized insurance company.

## 12. Limited License.

Buyer agrees and confirms that Seller's sale of the Products and providing services only grant to Buyer a **license** to use the Products and/or services, and does not grant to Buyer any other license or intellectual property or

similar right applicable to or in the Products or services, or in any estimates, projections, drawings, illustrations, calculations, installation instructions or other document or information Seller provides to Buyer, and Buyer waives any and all such rights. Seller retains ownership and control over all intellectual property including patents, trademarks, and copyrights applicable to or arising out of the Products and services. Buyer shall not name or designate any Seller information or Products or services in any patent application. Buyer may not alter or remove, and shall abide by, any patent, trademark, copyright, trade secrets, proprietary or other notices contained on or in the Products or services.

## 13. Confidential Information.

All confidential or proprietary information ("Confidential Information") provided by Seller to Buyer shall not be used by Buyer (except as necessary internally for use of the Products) and shall not be disclosed by Buyer to any person or entity unless the disclosure is agreed to in writing by Seller. Information generally available to the public is not confidential information of Seller.

## 14. Security Agreement.

Buyer grants Seller a continuing purchase money security interest in all Products sold or delivered to it and to the proceeds of those Products (collectively, the "Collateral") to secure the full payment of the purchase price of the Products and all other obligations of Buyer. Buyer authorizes Seller to file all financing statements, continuation statements and other documents necessary or desirable to establish, perfect, maintain, preserve and enforce Seller's security interest in the Collateral.

## 15. Relationship.

Seller is an independent contractor. Nothing in this Agreement shall be construed as creating a partnership, association or joint venture between the parties. Buyer shall have no power or authority to enter into any commitment on behalf of or otherwise bind Seller on any matter including making any representation or warranty on behalf of Seller. No employee of either party shall be deemed to be an employee of the other party.

## 16. No Setoff.

Buyer shall not have any right of set-off with regard to any amounts owed to Seller, regardless of any dispute that may arise between the parties.

## 17. Limitation on Actions.

Any action or proceeding by Buyer arising out of or relating to a Contract or the Products will be forever barred unless it is commenced within the earlier of: (a) one year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. Buyer must give Seller prompt written notice of any claim regarding a Contract or the Products.

## **18. Force Majeure.**

With the exception of payment requirements, neither party shall be liable, and performance shall be deemed extended, for delays or failure to perform directly or indirectly resulting from events and causes beyond its reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, materials or services through usual sources at normal prices.

## **19. No Waiver; Severability.**

Any failure by Seller to exercise any of its rights under these Terms or any Sales Documents shall not be construed as a waiver of such rights. In the event any of the provisions of these Terms or any Sales Documents are held to be invalid by any court of competent jurisdiction, such provision(s) shall be deemed to be severable and these Terms and any Sales Documents shall then be construed and enforced in accordance with the remaining provisions.

## **20. Choice of Law; Venue.**

This transaction and any controversy arising from or relating to the transaction or the Products shall be governed by the laws of the State of North Carolina, excluding its conflicts of law principles and the provisions of the 1980 United Nations Convention on the International

Sale of Goods ("UNCISG") are expressly excluded. The parties agree that the North Carolina State Courts and the United States District Court for the Western District of North Carolina, shall constitute the sole and exclusive judicial forum(s) and venue and, therefore, shall have sole and exclusive jurisdiction over the adjudication and resolution of any and all disputes or controversies arising out of or relating to a Contract or the purchase and sale of Products; except (i) with respect to any action instituted by Seller for equitable or comparable relief including an action for temporary or permanent injunctive relief, (ii) for an action instituted by Seller for recovery of possession of the Products, such as replevin, claim and delivery, attachment or the like or (iii) for Seller's claim or action to collect any amounts owed by Buyer pursuant to a Contract. Buyer and Seller hereby consent and submit to the exercise of personal jurisdiction over them by the North Carolina State Courts and United States District Court for the Western District of North Carolina.

## **21. Non-Assignment; Entire Agreement.**

Buyer may not assign all or any portion of its rights or obligations under a Contract without Seller's prior written consent, and any attempted assignment without that consent shall be void. A Contract contains the entire agreement of the parties relating to the subject matter and supersedes all previous and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral (except any non-disclosure or confidentiality agreement, the terms of which shall continue in effect according to its terms).