



AMTHOR INTERNATIONAL, INC.
STANDARD TERMS AND CONDITIONS

Effective June 1, 2020

READ THIS DOCUMENT CAREFULLY. IT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, INCLUDING LIMITATIONS AND EXCLUSIONS THAT APPLY TO YOU.

1. Applicability.

a. These Terms and Conditions (“Terms”) apply to the sale of goods and related or incidental services by Amthor International, Inc. (“Company” or “us” or “we”) and the person or entity that accepts a proposal or quotation from Company for the sale of Goods, the person or entity that is listed on the quote or order confirmation from Company, the person or entity listed on a credit application and their guarantors, and the person or entity designated as a Company distributor (referred to as “you”). In the event of an inconsistency or conflict between these Terms and any other terms or conditions contained in any other agreement between you and us, these Terms shall control where any such inconsistency or conflict exists. “Goods” as used herein shall mean the products and any related or incidental services furnished or provided by Company, and shall include all products, equipment, parts, materials, accessories and any related or incidental services furnished or provided by Company.

b. Any accompanying agreement, application, quotation or confirmation including any attachments thereto and these Terms (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Company shall not be bound by and specifically rejects any additional or different term whether printed in your purchase orders or otherwise, or in any other communications from you to Company unless such additional or different term is specifically consented to in a writing signed by Company. For the avoidance of doubt, any and all provisions contained in your terms and conditions are expressly rejected, including, without limitation, any “Pay when Paid” or “Pay if Paid” or like provisions and any indemnification requirements sought to be imposed on Company. Acceptance by Company of any purchase order for Company’s Goods, and your acceptance of any quotation or proposal by Company is expressly limited to and conditioned upon these Terms, which may not be changed or waived except in a writing signed by Company. Company’s fulfillment of your order does not constitute Company’s acceptance of any of your terms and conditions and does not serve to modify or amend these Terms.

2. Offer Expiration. Unless expressly stated otherwise on a quote, Company’s quote will expire at 5:00 p.m. EST on the fifteenth (15th) business day following the date of the quote.

3. Delivery and Shipping; Title to Goods; Risk of Loss.

a. Unless otherwise specifically agreed to in writing, all Goods shall be delivered F.O.B. Company's facility in Gretna, Virginia (the "Delivery Point"). Partial deliveries and shipments may be made. To the extent reasonably practical, we will use the routing and carrier you selected for shipping the Goods at your sole cost and risk. All shipping prices are quoted in United States dollars. If a Company quotation or order confirmation includes an estimate for shipping and handling at the time of order, you agree that such amounts are estimates only and are subject to change at the time of shipping. You agree to reimburse Company for such additional costs upon demand.

b. Company reserves the right to condition the delivery of any Goods to you on Company being paid in full at or prior to delivery or Company being provided additional security for payment that is satisfactory to Company, in its sole discretion.

c. When routing or carrier information is not provided by you or your specifications cannot be reasonably followed, we will route and select a carrier at your expense. Charges for shipping and handling will be made in accordance with our then-current shipping policies. Company assumes no responsibility for delays, breakage or damage after having made delivery of Goods to a carrier, at which time title to the Goods and all risk of loss for any cause passes to you. You must file any claim for damages incurred in transit with the carrier. We assume no responsibility to insure shipments unless agreed to in writing by us and at your expense.

d. Unless otherwise agreed to by Company in writing, all delivery dates are approximate and are contingent upon prompt receipt by Company of all necessary information and, if applicable, advance payment, from you. Except as otherwise provided in the quotation or order confirmation, you shall take delivery of the Goods within five (5) days of Company's written notice that the Goods are ready and available at the Delivery Point. You shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

e. If for any reason you fail to accept delivery of any of the Goods on the date fixed pursuant to Company's notice that the Goods are ready and available at the Delivery Point, or if Company is unable to deliver the Goods at the Delivery Point on such date because you have not provided appropriate instructions, documents, licenses, authorizations or payment: (i) risk of loss to the Goods shall pass to you; (ii) the Goods shall be deemed to have been delivered; and (iii) Company, at its option, may store the Goods until you pick them up, whereupon you shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. Inspection and Rejection of Nonconforming Goods.

a. You shall inspect the Goods within five (5) days of receipt ("Inspection Period"). You will be deemed to have accepted the Goods unless you notify us in writing of any Nonconforming Goods during the Inspection Period and furnish such written evidence or other documentation as reasonably required by us. "Nonconforming Goods" means only the following: (i) Goods delivered that are materially different the products identified in the quote or order confirmation; or (ii) Goods with a label or packaging that incorrectly identifies its contents.

b. If you timely notify us of any Nonconforming Goods, Company will then determine, in its reasonable discretion, whether the Goods are Nonconforming Goods. If we determine that the Goods are

Nonconforming Goods, we shall, as your sole remedy, and in our sole discretion either (i) replace the Nonconforming Goods with conforming Goods, or (ii) refund the purchase price for the Nonconforming Goods, together with all shipping expenses incurred by you in connection therewith. You shall ship, at our expense and risk of loss, the Nonconforming Goods to our facility located at Gretna, Virginia. If we exercise our option to replace Nonconforming Goods, we shall, after receiving your shipment of Nonconforming Goods, deliver the replacement Goods to the Delivery Point. You acknowledge and agree that the remedies set forth in this Section 4(b) are your exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 4(b) all sales of Goods to you are made on a one-way basis and you have no right to return Goods purchased under this Agreement.

5. Security Interest. As collateral security for the payment of the purchase price of the Goods, you hereby grant to Company a first priority lien on and security interest in and to all of the right, title and interest of you in, to and under the Goods and any equipment on which the Goods are installed or to be installed, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Virginia Uniform Commercial Code. You authorize us to execute, on your behalf, statements or other documents necessary to perfect our security interest on the Goods.

6. Payment Terms.

a. Except as otherwise stated herein, all deposits are non-refundable. Unless otherwise stated on the face of the quote or order confirmation and subject to Company's rights under Section 3(b), you shall pay all invoiced amounts due to Company within thirty (30) days of the date of the invoice. All payments must be in United States dollars in cash or other immediately available funds (e.g., ACH or wire transfer). You shall pay interest on all past-due sums at the lesser rate of one and one-half percent (1.5%) per month or the maximum rate permitted by law, calculated daily and compounded monthly. You shall pay Company a fee of \$50.00 for any checks that are rejected for insufficient funds. You shall reimburse Company for all costs incurred in collecting any amounts due to Company including, without limitation, reasonable attorneys' fees, opinion witness fees, and court costs. In addition to all other remedies available under the Agreement or at law (which Company does not waive by the exercise of any rights hereunder), Company shall be entitled to suspend the delivery of any Goods if you fail to pay any amounts when due hereunder or any other agreement between you and Company and such failure continues for 60 days following the date of the invoice. You may not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Company, whether relating to an alleged breach by Company, bankruptcy or otherwise.

b. Unless expressly stated otherwise, prices are exclusive of all sales, use and excise taxes and any other similar taxes, duties, and charges of any kind imposed by any governmental authority. You are responsible for the payment of all such taxes, duties and charges.

c. Company accepts most major credit cards for some but not all purchases. If Company in its sole discretion accepts a credit card payment from you, you represent, warrant, and agree that (a) the credit card information you supply to us is true, correct and complete, (b) charges incurred by you will be honored by your credit card company, (c) you will pay charges incurred by you at the prices provided in the quotation or order confirmation, including all applicable taxes and title fees, if any, and (d) you will pay any associated service fees or charges incurred or assessed by Company related to the credit card payment.

7. Pricing.

a. The prices stated in Company's quote or order confirmation are firm; however, the prices are subject to increase in Company's discretion in the event of (i) alterations in the specifications, quantities, designs, or delivery schedules, and (ii) causes beyond the control of Company including, without limitation, changes in the availability or price of raw materials.

b. If your order involves Company installing the Goods onto a truck cab and chassis furnished by you and it is necessary to create special adapters, relocate mufflers, catalytic converters, gas tanks, battery boxes or other components, or extend the rear frame to accommodate the installation of the Goods, you will be notified of the costs for labor and material. Such costs will be added to the purchase price and payable as provided in these Terms.

8. Limited Warranties.

a. Subject to the provisions of this Section 8, Company warrants to you that the Goods will be free of material defects in material and workmanship under normal use and service, excluding material defects in material and workmanship relating to the exterior coating of the Goods (including but not limited to, primer, paint and decals) for which Company makes no warranty, during the Warranty Period ("Limited Warranties"). The "Warranty Period" begins on the date of shipment of the Goods and is as follows:

FOR PROPANE TANKS, THE WARRANTY PERIOD IS ONE YEAR.

FOR TANKS USED FOR HOLDING WATER, THE WARRANTY PERIOD IS ONE YEAR.

FOR VACUUM AND PORTABLE RESTROOM TANKS, THE WARRANTY PERIOD IS ONE YEAR WITH AN ADDITIONAL FOUR YEARS AS TO LEAKS ONLY UNLESS THE TANK IS MOUNTED ON A TANDEM CHASSIS WITH SPRING SUSPENSION, IN WHICH CASE, THE ENTIRE WARRANTY PERIOD (INCLUDING LEAKS) IS ONE YEAR.

FOR ALL OTHER TANK APPLICATIONS, THE WARRANTY PERIOD IS FIVE YEARS UNLESS THE TANK IS MOUNTED ON A TANDEM CHASSIS WITH SPRING SUSPENSION, IN WHICH CASE, THE WARRANTY PERIOD IS ONE YEAR.

EXCEPT FOR THE LIMITED WARRANTIES SET FORTH HEREIN, COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; or (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Company makes no representation with respect to the gross vehicle weight of the Goods. It is your responsibility to ensure that the Goods are not used in any manner which violates any law, regulation, ordinance or ruling applicable to operation on any highway or roadway.

b. Company shall not be liable for a breach of the Limited Warranties unless: (i) you give written notice of the defect, reasonably described, to Company within 30 days of the time when you discover or

reasonably should have discovered the defect; (ii) Company is given a reasonable opportunity after receiving the notice to examine such Goods and you (if requested to do so by Company) return such Goods to Company's place of business at Company's cost for the examination to take place there; (iii) Company reasonably verifies your claim that the Goods are defective; and (iv) Company is provided the opportunity to perform or approve any necessary repair or corrective work prior to the work being performed. Additionally, Company shall not be liable for breach of the Limited Warranties if, (i) the Goods have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, installation on an improper or insufficient chassis, or have sustained any other damage caused by a chassis, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions, or use contrary to any instructions issued by Company; (ii) the defect or condition arises in whole or in part as a result of corrosion or other deterioration due to chemical storage and/or contamination; (iii) the defect arises in whole or in part because you failed to follow Company's oral or written instructions as to the storage, installation, operation, use, or maintenance of the Goods; (iv) the Goods have been reconstructed, repaired, or altered without Company's prior written consent; or (v) the Goods have been used with any third party product, hardware, component or product that has not been previously approved in writing by Company. For vacuum tanks, misuse includes, but is not limited to, pressurizing a flat tank at greater than two pounds per square inch (2 PSI).

c. Subject to Section 8(b), above, with respect to any Goods during the Warranty Period, Company shall, in its sole discretion, either repair or replace such Goods (or the defective part), or (ii) credit or refund the price of such Goods provided that, if Company so requests, you shall, at Company's expense, return such Goods to Company. You are responsible for arranging for the return of any defective Goods to us. You must obtain Company's written permission before any Goods will be accepted for return. **THE REMEDIES SET FORTH THIS SECTION 8(c) SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH HEREIN.**

d. Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products, including without limitation, exterior protective coatings and truck chassis, are not covered by the Limited Warranties. For the avoidance of doubt, **COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; or (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

9. Limitation of Liability.

a. **IN NO EVENT SHALL COMPANY OR ITS PARENT, SUBSIDIARIES, AFFILIATED COMPANIES, AGENTS, SHAREHOLDERS, EMPLOYEES, OR OFFICERS (COLLECTIVELY, "AFFILIATES") BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND**

NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, ARISING OUT OR IN CONNECTION WITH THE SALE, DELIVERY, USE, REPAIR OR PERFORMANCE OF THE GOODS. SUCH DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, FINES, TICKETS, AND INFRACTIONS FROM ANY GOVERNMENTAL OR REGULATORY AUTHORITY ISSUED OR INCURRED FOR ANY REASON; CLEANUP AND REMEDIATION COSTS; PROPERTY DAMAGE OR BODILY INJURY TO ANY PERSON; AND TOWING, TRANSPORTATION AND TRAVEL EXPENSES.

b. IN NO EVENT SHALL COMPANY'S OR AFFILIATES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ANY GOODS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY, OR OTHERWISE, EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY YOU FOR SUCH GOODS.

10. Compliance with Laws. You shall at all times act in a manner that complies with all federal, state, and local laws related to the use, transportation, operation, or sale of the Goods or equipment on which the Goods are installed, including without limitation, highway weight restrictions.

11. Indemnity. By placing an order with Company and accepting delivery of the Goods, you agree to indemnify, defend, and hold harmless Company, its officers, directors, employees, contractors, agents, affiliates successors, and assigns ("Amthor Indemnified Party(ies)") from and against any and all damages, losses, liabilities, penalties, fines, and costs (including attorneys' fees and opinion witness fees) incurred or suffered by any Amthor Indemnified Party (a) arising out of or related to any actual or alleged deficiencies or defects in (i) the designs or specifications you provided to Company with respect to the Goods, (ii) the design, construction, or maintenance of any products not manufactured by Company on which the Goods are installed, including without limitation, cabs and chasses, or (b) arising out of or related to your breach of these Terms or the Agreement or any negligent act or omission by you or any of your successors, heirs, or assign, with respect to the Goods or any equipment on which the Goods are installed.

12. Force Majeure. Company shall be excused from any delay or non-performance in the delivery of any order and you shall have no claim for damages if and to the extent such delay or failure is caused by occurrences beyond the reasonable control of Company including, but not limited to, market conditions, states of emergencies declared by federal, state and/or local governments, acts of God, war, acts of terrorism, riots and civil disturbances, expropriation or confiscation of facilities or compliance with order or request of governmental authority, strikes, material delays, labor or employment difficulties, whether direct or indirect, or any cause whatsoever which is not within the reasonable control of Company.

13. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the application, guaranty, order, quotation, or order confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Such notices shall be deemed given on the day of such personal delivery, receipt of registered or certified mail, or delivery by courier, as the case may be.

14. Miscellaneous.

a. *Severability.* If any term or provision of these Terms or the Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

b. *Waiver.* No waiver by Company of any of the provisions of these Terms or the Agreement is effective unless explicitly set forth in writing and signed by the President or Chief Operating Officer of Company. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms or the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

c. *Assignment.* You may not assign any of your rights or delegate any of your obligations without the prior written consent of Company. Any purported assignment or delegation in violation of this paragraph is null and void. No assignment or delegation relieves you of any of your obligations.

d. *No Third-Party Beneficiaries.* Nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

e. *Governing Law; Venue.* These Terms and the Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of law rules. Any legal suit, action or proceeding arising out of or relating to these Terms or the Agreement must be instituted exclusively in either a state court sitting in Pittsylvania County, Virginia or the federal court sitting in Danville, Virginia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. YOU HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY.

f. *No Certification to Transport Canada regulation.* Neither these Terms nor the Agreement includes certification to Transport Canada regulation (TC406, TC407, or TC412).