

CEI EQUIPMENT COMPANY LLC d/b/a KT Pacer
GENERAL PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance and Complete Agreement.

Seller agrees to provide to CEI Equipment Company LLC d/b/a KT Pacer, for itself and its subsidiaries (hereinafter referred to individually and collectively as "Buyer") the services ("Services") and/or goods ("Goods", together with Services, the "Deliverables"), described in any properly issued and accepted purchase order between Buyer and Seller ("Purchase Order"), in accordance with Buyer's General Purchase Order Terms and Conditions (hereafter referred to as "Buyer's T&C"). Upon acceptance of a Purchase Order, shipment of Goods or commencement of a Service, Seller shall be bound by the provisions of Buyer's T&C, including all provisions set forth on the face of any applicable Purchase Order, whether Seller acknowledges or otherwise signs Buyer's T&C or the Purchase Order, unless Seller objects to such terms in writing prior to shipping Goods or commencing Services. This writing does not constitute a firm offer and may be revoked at any time prior to acceptance. To the extent terms on the face of the Purchase Order conflict with Buyer's T&C, the terms on the face of the Purchase Order will govern. Buyer's T&C may not be added to, modified, superseded, or otherwise altered, unless expressly agreed to in writing and duly executed by an authorized representative of Buyer. Any terms or conditions contained in any acknowledgment, invoice, or other communication of Seller, which are inconsistent with, or in addition to, the terms and conditions herein, are hereby rejected. To the extent that Buyer's T&C might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof and shipment of the Goods or beginning performance of any Services by Seller shall constitute such assent. Buyer's T&C constitutes the entire agreement and understanding between Buyer and Seller with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, regarding the subject matter of Buyer's T&C.

2. Packing, Shipping, and Delivery.

- a. All Goods shall be properly packed, marked and shipped in accordance with the requirements of the common carrier transporting such Goods and of the applicable Purchase Order and in a manner which, unless otherwise agreed, will permit the securing of the lowest transportation rates. All shipments to be forwarded on one day via one route shall be consolidated and shipped to protect the lowest transportation charge. Seller shall route shipments in accordance with Buyer's T&C. Unless otherwise provided in the applicable Purchase Order, no charge shall be made by Seller for containers, crating, boxing, bundling, dunnage, drayage, or storage. Each packing slip, bill of lading and invoice shall bear the applicable Purchase Order number. A numbered master packing slip shall accompany each shipment.
- b. Time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered, and Services performed, by the applicable and agreed upon Delivery Date. Unless otherwise agreed by Buyer in writing, all shipments are DDP Buyer's designated facility (Incoterms 2020). Seller shall furnish sufficient labor and management forces, plant, and equipment and shall work such hours (including night shift, overtime, holiday work, without additional cost to Buyer) as may be required to assure timely delivery and performance. Seller must immediately notify Buyer if Seller is likely to be unable to meet a Delivery Date. At any time prior to the Delivery Date, Buyer may, upon notice to Seller, terminate or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of Buyer or due to failure of Seller to

comply with Buyer's T&C, unless otherwise noted. Shipping costs for Goods on back order shall be paid only at the rate which would have been applicable had the complete order been shipped at one time. All excess costs shall be borne by Seller. Buyer reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule, unless prior permission has been granted in writing by Buyer.

- c. Without limiting Buyer's rights and remedies at law or in equity, Buyer reserves the right to charge Seller for any loss, expense (including reasonable attorneys' fees) or damage sustained as a result of Seller's failure to deliver conforming Goods or Services or other breach of Buyer's T&C, including without limitation, expenses incurred in connection with Buyer's purchase of substitute goods, incidental damages and consequential damages resulting from Seller's failure or breach.
- d. Seller shall provide all applicable material safety data sheets to Buyer.

3. Price

Prices for the Goods and/or Services will be set out in the applicable Purchase Order, and are otherwise fixed, firm and not subject to increase without Buyer's prior written approval. Seller will issue all invoices on a timely basis. All invoices delivered by Seller must meet Buyer's requirements and at a minimum shall reference the applicable Purchase Order. Buyer will pay the undisputed portion of properly rendered invoices within 60 days from the invoice date. Buyer shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts and such withholding of disputed amounts shall not be deemed a breach of Buyer's T&C nor shall any interest be charged on such amounts. Notwithstanding the foregoing, Buyer agrees to pay the balance of the undisputed amounts on any invoice that is the subject of any dispute within the time periods specified herein. Unless otherwise expressly agreed by Buyer in writing, the price includes all taxes (sales, use, excise, privilege, ad valorem, and other taxes, duties, tariffs and assessments now or hereafter imposed or levied) and charges for packing, hauling, cartage, storage, insurance and transportation to Buyer's designated point of delivery. No charges will be allowed for packing, crating, freight, freight surcharges, shipping, shipping insurance, taxes, expedited delivery, or cartage, except as expressly provided in any applicable Purchase Order. If Seller sells or offers to sell any Goods or Services of the same or similar type as the Deliverables at a lower price and/or on more favorable terms or conditions to any other person or entity, Seller shall provide written notice to Buyer, whereupon Buyer shall have the option to have such more favorable price, terms and/or conditions applied to this Purchase Order and Purchase Orders thereafter.

4. Inspection; Acceptance and Rejection.

- a. All Goods and Services furnished under the applicable Purchase Order will be subject to Buyer's final inspection and approval at Buyer's premises within a reasonable time after delivery, irrespective of payment date. Upon such inspection Buyer shall either accept the Goods or Services or reject them. Buyer shall have the right to reject any Goods that are delivered in excess of the quantity ordered or are damaged or defective. In addition, Buyer shall have the right to reject any Goods or Services that are not in conformance with the specifications of the applicable Purchase Order or any term of Buyer's T&C. Transfer of title to Buyer of Goods shall not constitute Buyer's acceptance of those Goods. Buyer shall provide Seller notice of any Goods or Services that are rejected, together with the reasons for such rejection. Buyer's inspection, testing, or acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect Seller's warranty

obligations hereunder with respect to the Goods or Services, and such warranties shall survive inspection, test, acceptance and use of the Goods or Services.

- b. Buyer shall be entitled to return rejected Goods to Seller at Seller's expense and risk of loss for, at Buyer's option, either: (i) full credit or refund of all amounts paid by Buyer to Seller for the rejected Goods; or (ii) replacement Goods to be received within the time period specified by Buyer. Title to rejected Goods that are returned to Seller shall transfer to Seller upon such delivery and such Goods shall not be replaced by Seller except upon written instructions from Buyer. Seller shall not deliver Goods that were previously rejected on grounds of non-compliance with Buyer's T&C, unless delivery of such Goods is approved in advance in writing by Buyer, and is accompanied by a written disclosure of Buyer's prior rejection(s). Buyer reserves the right to have a representative (either Buyer's personnel or contracted personnel) in Seller's facilities to inspect any material covered by the applicable Purchase Order at any reasonable time from the start of manufacturing until final shipment of conforming Goods. Buyer and its designees shall have the right to audit and inspect Seller and Seller's suppliers' records and facilities to determine Seller's and its supplier's compliance with the Purchase Order.
- c. Regardless of delivery terms, title to and risk of loss of the Goods under the applicable Purchase Order shall not pass to Buyer until Buyer's receipt and acceptance of the Goods. Any damage to Goods caused during transit shall be repaired or replaced at Seller's sole cost and expense.
- d. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order. Forecasts, estimates and similar projections of Buyer are not purchase commitments.

5. Changes and Discrepancies.

Any discrepancies, omissions, or lack of clarity in drawings, specifications, or Purchase Orders, must be referred to the Buyer for written interpretation before the applicable Purchase Order is processed. Buyer shall have the right, at any time before completion of the Purchase Order, to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in price or in the time required for performance, Seller shall promptly notify Buyer thereof in writing and either an equitable adjustment shall be made or Buyer may, at its option, terminate a Purchase Order if agreement on an equitable adjustment cannot be reached. Changes shall not be binding upon Buyer unless evidenced by a Purchase Order change notice and issued and signed by Buyer.

6. Termination.

Time is of the essence as to any Purchase Order between Buyer and Seller. Buyer reserves the right to terminate any such Purchase Order, or any portion of such Purchase Order, without liability, if; (1) delivery or performance is not made when and as specified; (b) Seller fails to meet contract commitments as to exact time, price, quality or quantity; (c) Seller fails to provide Buyer with written adequate assurance of contract commitments as to exact time, price, quality or quantity within five (5) days after requested by Buyer; (d) Seller ceases to conduct its operation in the normal course of business; (e) Seller is unable to meet its obligations as they mature; (f) proceedings are instituted against Seller under the bankruptcy laws or any other laws relating to the relief of creditors; (g) a receiver is appointed or applied for by Seller; or (h) any

assignment is made by Seller for the benefit of creditors; or (i) Buyer provides no less than seven (7) days' written notice to Seller. Buyer also reserves the right to terminate a Purchase Order for any other reason permitted by the Uniform Commercial Code then in effect in the state where Buyer entered into the applicable Purchase Order. Buyer's rights and remedies are cumulative, not exclusive and in addition to its rights and remedies at law, in equity or otherwise. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination. Upon receipt of notice of any termination, Seller shall, unless the notice directs otherwise, immediately discontinue all work.

7. Invoice and Payment

Unless otherwise specified in the Purchase Order, payment terms will be *Net 60*. All quotes and amounts paid under the Purchase Order shall be in U.S. Dollars. Seller shall bear the risk of fluctuation in foreign exchange rate. Buyer shall have no obligation to pay any amount prior to Buyer's receipt of a correct and proper invoice for such amount prepared in accordance with the Purchase Order. Except as expressly provided in the Purchase Order, payment shall not be due until final acceptance by Buyer. Buyer shall have the right to reduce and set off against amounts payable under the Purchase Order any indebtedness or other claim which Buyer may have against Seller, however and whenever arising. No invoice shall be issued prior to delivery of Goods or provision of Services and no payment shall be made prior to receipt of the Goods or completion of the Services, as applicable, and delivery of a correct invoice.

8. Warranties

By furnishing Goods and/or Services under the Purchase Order, Seller warrants that Seller will convey good title to the Goods, and that the Goods and Services furnished will (i) be free from defects in materials, workmanship and design, (ii) safe to use, consume or dispose of, (iii) be merchantable, (iv) be in full conformity with Buyer's specifications, drawings, and data, and Seller's descriptions, promises, or samples, (v) be fit for the ordinary purposes for which such Goods and Services are used; (vi) be adequately contained, packaged, and labeled; (vii) conform to the terms of the Purchase Order, (viii) be fit for the Buyer's intended use provided the Seller has reason to know of such use; and (ix) be free and clear of all liens, claims, security interests and other encumbrances. These warranties shall survive acceptance of the Goods and Services and are in addition to any warranties of additional scope given to Buyer by Seller. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

9. Compliance with Laws

Seller represents and warrants that, in the production and sale of Goods to be delivered pursuant hereto, and in the provision of Services hereunder, Seller has complied with all applicable foreign, federal, provincial, state, local and municipal laws and regulations as well as requirements and standards applicable to the Deliverables, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of such Goods, and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity, including without limitation, the requirements of the Fair Labor Standards Act of 1938, as amended, and the rules and regulations of the Secretary of Labor issued pursuant to Executive Order Number 11246 of September 24, 1965.

10. Indemnity

Seller, shall defend, indemnify, and hold Buyer, its affiliates and their respective officers, directors,

members, managers, shareholders, employees, customers, users of Goods, successors and assigns, harmless against any and all claims, demands, damages, losses, liabilities, lawsuits, dispute resolution, judgments, fines, settlements, penalties, costs and expenses including without limitation all attorneys' fees and litigation costs and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, whether direct, indirect, incidental, consequential, or otherwise (collectively, "Claims") arising out of relating to (i) the Deliverables (including death, injury and property damage); (ii) actual or alleged act, omission, negligence or failure to comply with the Purchase Order or any other agreement between Buyer and Seller; (iii) any Recall; (iv) actual or alleged infringement or misappropriation of any patent, copyright, trademark, trade secret, know how or other intellectual property or proprietary right arising from manufacture, sale, performance or use of the Deliverables; (v) loss or damage to Buyer's Property; and (vi) Seller's breach of the Purchase Order. Seller shall not enter into any settlement without Buyer's prior written consent. This indemnification is in addition to the warranty obligations of Seller. Seller's obligation under (iv) above shall not apply to Goods manufactured pursuant to detailed designs furnished by Buyer nor to any infringement arising from the use or sale of Goods in combination with Goods not delivered by Seller if such infringement would not have occurred from the use or sale of such Goods solely for the purpose for which they were designed or sold to Buyer. If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, then in addition to Buyer's other remedies, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with Non-infringing goods of equal quality and performance.

11. Recall

In the event that Buyer determines, in Buyer's sole discretion, that any defect, nonconformance or deficiency in any of the Goods requires a field campaign, recall, similar or other action ("Recall") to repair, replace or remediate any Goods or any of Buyer's products in which Goods are incorporated, Seller shall be liable to Buyer and its customers for all damages, costs and expenses with regard to the foregoing including, without limitation, attorneys' fees and court costs.

12. Insurance

Seller shall obtain and, at all times in which the Order is in effect and for no less than two (2) years thereafter, maintain at its cost insurance as designated by Buyer from time to time, but no less than insurance with insurers having a current A.M. Best rating and financial category of "A- VIII" or better, respectively: (1) primary comprehensive or commercial general liability insurance worldwide with limits of at least \$1 million per occurrence combined single limit for bodily injury and property damage with a \$2 million products-completed operations aggregate and a \$2 million general aggregate, including coverage for: (i) Products and Completed Operations liability; (ii) Blanket Contractual liability; (iii) Premises Liability; and (iv) Cross Liability endorsement or Severability of Interest clause; (2) Auto Liability insurance with limit of \$1,000,000 per occurrence combined single limit for owned (if applicable), hired and non-owned vehicle coverage; (3) umbrella insurance with limits of \$4,000,000 per occurrence and \$4,000,000 aggregate covering underlying general liability, employer's liability (if applicable) and auto liability. Insurance required shall: (a) be endorsed to insure Buyer, its officers, directors, employees, representatives and agents as additional insureds; (b) be endorsed to waive any rights of subrogation against Buyer's insurers and Buyer; (c) provide contractual liability coverage to Seller for its indemnity obligations; and (d) be endorsed to provide that such insurance is primary to and non-contributory with any other insurance obtained by, for or on behalf of Buyer notwithstanding any "other insurance" provision contained within such policies, with such insurance being excess, secondary, and non-

contributing. Seller shall provide written notice to Buyer no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage. Prior hereto and at any time upon reasonable request, Seller shall provide certificates of insurance to Buyer along with other documentation as may be reasonably required by Buyer to evidence the insurance coverages required herein. Seller shall require its sub-suppliers and sub-tier contractors to maintain the same insurance coverage and limits as described herein.

13. Force Majeure

Buyer shall not be liable for failure to take delivery of the Goods or to allow performance of the Services or to otherwise perform hereunder if such failure or inability is due to causes beyond Buyer's control.

14. Assignment

Seller shall not assign, transfer, or subcontract the applicable Purchase Order or any right or obligation set forth in the Purchase Order without the prior written consent of Buyer, which may be withheld for any reason. Any unauthorized assignment, transfer, or subcontract shall be void and ineffective. Seller further agrees that all Goods and Services furnished under the Purchase Order by any subcontractor shall be furnished pursuant to and in compliance with all terms of the Purchase Order. Seller shall take all actions necessary to assure that any such subcontractor complies with the terms of the Purchase Order and that Seller shall be responsible to Buyer for said compliance of all Goods and Services furnished by subcontractors as if said compliance of Goods and Services had been furnished by Seller. Unless legally required to do so, Buyer shall not be obligated to accept performance of the Purchase Order from any other party, including the Seller as a debtor in any case under Title 11 of the United States Code.

15. Governing Law

The applicable Purchase Order shall be interpreted and enforced in accordance with the laws of the state in which Buyer maintains its principal place of business (the "Governing State") regardless of any principles of conflicts of laws of any jurisdiction and regardless of whether Goods are being sold, leased, or licensed, or whether Services are being performed. Seller and Buyer agree that both parties have all of the rights, duties, and remedies available under the Uniform Commercial Code as adopted in the Governing State. Any disputes arising under, or in connection with the applicable Purchase Order will be subject to the exclusive jurisdiction of the courts located in the Governing State. The sale of Goods under this Purchase Order is not subject to the UN Convention of Contracts for the International Sale of Goods.

16. Limited Liability

Buyer shall not be liable to Seller for any special, incidental, punitive, exemplary, consequential damages, or lost profits arising out of or related, in whole or in part, to the Goods and Services furnished under the Purchase Order. This exclusion shall apply regardless of whether the liability arises in tort or contract, at law or in equity.

17. Waiver

Unless otherwise stated in the Purchase Order, the parties recognize, acknowledge, and agree that failure by either party to enforce any term of the Purchase Order and Buyer's T&C shall not constitute a waiver of any rights or deprive either party of the rights to insist thereafter upon strict adherence to that or any other term of the Purchase Order and Buyer's T&C, nor shall a waiver of any breach of the Purchase Order and Buyer's T&C constitute a waiver of any preceding breach. No waiver of any of the provisions of the Purchase Order and Buyer's T&C, unless expressly stated otherwise in the Purchase Order, shall be valid and binding unless it is in writing and signed by the party against whom it is sought to be enforced.

18. Property Furnished to Seller (Tooling)

All special dies, molds, patterns, jigs, fixtures, documents, plans, drawings, specifications, computer programs, records, files, Confidential Information as defined below, and any other property, including any intellectual property therein, including patent, copyright, trademark, and trade secrets, which Buyer furnishes to Seller or specifically pays for, for use in the performance of a Purchase Order or otherwise ("Buyer's Property"), shall be and remain the sole and exclusive property of Buyer, shall be subject to immediate removal, destruction, or return upon Buyer's instruction, shall be for Buyer's exclusive use, shall be held at Seller's risk, and shall be kept insured at Seller's expense while in Seller's custody or control in an amount equal to replacement cost, with Buyer named as an additional insured and as loss payee under insurance policies written by insurance companies acceptable to Buyer in Buyer's sole judgment. Seller will timely furnish copies of policies or certificates of insurance to Buyer upon Buyer's request. No articles made from or using Buyer's Property shall be furnished by Seller to any other person or entity without Buyer's prior written consent. Seller shall be responsible for maintaining adequate records and maintenance and protection of Buyer's Property and shall return Buyer's Property to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain Buyer's Property and acknowledges that its obligation to return Buyer's Property upon demand is unconditional.

19. Severability

The applicable Purchase Order and Buyer's T&C shall be enforceable to the fullest extent allowed by law. If any provision of a Purchase Order or Buyer's T&C shall be deemed to be invalid, unlawful, illegal, void, or inoperative, for any reason, such provision shall be struck from the Purchase Order or Buyer's T&C and otherwise the Purchase Order and Buyer's T&C shall continue in full force and effect.

20. Survival

The parties' obligations under the applicable Purchase Order and Buyer's T&C which, by their nature would continue beyond the termination of the applicable Purchase Order, shall survive termination of the applicable Purchase Order.

21. Independent Contractors

Seller will perform its obligations under the Purchase Order and Buyer's T&C as an independent contractor and in no way will Seller or its employees be considered employees, agents, partners, fiduciaries, or joint venturers of Buyer. Seller and its employees will have no authority to represent Buyer or its affiliates or

bind Buyer or its affiliates in any way, and neither Seller nor its employees will hold themselves out as having authority to act for Buyer or its affiliates.

22. Confidentiality and Non-Disclosure

Seller acknowledges and agrees that in the course of performing work described in any applicable Purchase Order and otherwise, Seller may become exposed to proprietary, confidential, sensitive, non-public, or trade secret information concerning the business and operations of Buyer (collectively, "Confidential Information"). Seller shall hold Confidential Information in strict confidence and shall not directly or indirectly disclose Confidential Information during the term of the Purchase Order or thereafter to any third party or make use of Confidential Information except as required in performance of the work described in the Purchase Order or as required by order of any court or body or agency of competent jurisdiction, provided however, that Seller shall give Buyer prior written notice of any such disclosure and shall cooperate with Buyer if Buyer seeks a protective order or similar protection as Buyer may deem appropriate to preserve the confidential nature of such information. Seller agrees that any breach of this Section will cause Buyer substantial and irrevocable damage, and therefore, in the event of any such breach, in addition to any other remedies which may be available, Buyer shall have the right to specific performance and injunctive relief, as well as reasonable attorney's fees and costs for enforcing this Section. Seller agrees to take all necessary steps to ensure that all of its employees and subcontractors who are engaged in performance of the work described in the Purchase Order are aware of this Section and fully comply with the restrictions set forth herein. The restrictions contained in this Section are necessary for the protection of the business and the goodwill of Buyer and are considered by Seller to be reasonable for such purposes.

23. Supplier Code of Conduct

Marmon Holdings, Inc. and Buyer, its subsidiary (collectively, the "Marmon Parties"), both share a long-standing commitment to high ethical standards and compliance with all applicable laws and regulations that govern their businesses. Accordingly, the Marmon Parties strive to conduct business with business partners who share their commitment to high ethical standards and conduct business in an ethical, legal and responsible manner. Marmon's Supplier Code of Conduct (the "Code"), a copy of which can be found at <https://ktpacer.com/terms-and-conditions/>, sets out the Marmon Parties' expectations for their business partners regarding business ethics and codes of conduct when interacting with the Marmon Parties and such Code is hereby incorporated into Buyer's T&C by this reference.