

1. APPLICABILITY:

(a) These Terms & Conditions (“**T&C**”) govern the purchase of goods and services by the entity that is either listed in the “Ship To” field of the Order or, if none, otherwise designated in the Order as the buyer or customer (“**Buyer**”) from the provider of such goods and services designated in the Order (“**Seller**”). “**Order**” means the accompanying purchase order or other legal instrument, including all exhibits and other documents appended thereto or otherwise incorporated therein. The goods and services provided under the Order are collectively referred to as the “**Work**”. These T&C also govern any replacement or substitute Work.

(b) The Order and these T&C (collectively, the “**Agreement**”) constitute the parties’ sole and entire agreement with respect to the Work and supersede all prior and contemporaneous understandings, agreements and negotiations, both written and oral, with respect to the Work.

(c) Notwithstanding the foregoing or anything herein to the contrary, if a written agreement signed by both parties is in existence covering the provision of the Work, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these T&C.

(d) Buyer is not obligated to any minimum or future purchase obligations under this Agreement, and this Agreement is not an exclusive dealing between the parties for any goods or services.

2. SELLER’S ACCEPTANCE: Seller has read this Agreement and understands it to be the complete agreement between Buyer and Seller with respect to the Work. Seller’s written acceptance or acknowledgment of the Order, or Seller’s shipment or performance of any Work, shall be only upon the terms and conditions of this Agreement and constitute acceptance of this Agreement. Any and all terms and conditions proposed by Seller that are different from or in addition to the terms and conditions of this Agreement are hereby deemed to be material alterations, shall not become a part of this Agreement and are superseded and replaced by the terms and conditions of this Agreement. This Agreement expressly limits Seller’s acceptance to the terms and conditions of this Agreement.

3. SHIPPING, DELIVERY and INSPECTION:

(a) Seller agrees to: (i) securely pack, label, handle and ship all goods in accordance with the manner and method in which similar goods are customarily transported to a buyer to ensure safe and secure delivery; (ii) route shipments in accordance with Buyer’s instructions; (iii) charge Buyer no costs for handling, packaging, storage or transportation of goods except as otherwise stated in the Order; (iv) provide with each shipment packing slips with the Order number marked thereon; (v) properly mark each package with the Order number and, where multiple packages comprise a single shipment, to consecutively number each package; and (vi) promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer’s instructions and carrier’s requirements. The labeling on shipments and accompanying documentation must be sufficient to enable Buyer to easily identify the goods purchased.

(b) Time is of the essence of the delivery of goods and completion of services under this Agreement. Deliveries shall be made by Seller at such times and places as specified by Buyer. Strict adherence to Buyer’s delivery schedule is a material condition of this Agreement. Buyer shall have no obligation to pay for any Work in breach of the foregoing. If it appears that a delivery schedule will not be met, Seller shall promptly notify Buyer and shall take all reasonable actions necessary to mitigate the extent of the delay. Such reasonable actions include expedited shipment and shall be at Seller’s sole cost except to the extent the delay is caused by Buyer.

(c) Unless otherwise specified in the Order, all goods shall be delivered FOB Destination. Title to goods shall pass to Buyer upon the earlier of payment or acceptance by Buyer. Seller shall be responsible for all risk of loss or damage to goods (i) until such passage of title and (ii) during the return of any goods.

(d) Buyer has the right to inspect any and all Work within 30 days of the goods’ delivery date and the services’ completion date, respectively. Buyer may reject any Work that Buyer reasonably determines to be non-conforming, along with any other Work substantially impacted by such non-conformity. Non-conforming Work includes Work that does not conform to applicable specifications, drawings, samples or descriptions, that is defective in material, workmanship or design or that is not fit for the purposes made known by Buyer (if any). If Buyer rejects any Work, Buyer has the right, effective upon notice to Seller, to: (i) rescind the Agreement in its entirety; (ii) accept the Work at a reasonably reduced price; or (iii) reject the Work and require replacement or repair of the rejected Work. If Buyer requires replacement or repair of the Work, Seller shall promptly do so at its own expense, including all labor and transportation charges. If Seller again fails to timely deliver conforming Work, Buyer may obtain the Work from a third party at Seller’s expense and terminate this Agreement for cause. No payment, inspection or other action taken by Buyer prior to expiration of said 30-day inspection period, other than written notice of acceptance, shall constitute Buyer’s acceptance of the Work.

4. PRICING and PAYMENT:

(a) The price of the Work is stated in the Order; provided that, if no price is stated in the Order, the price shall be the price set out in Seller’s published price list in effect as of the Order date. Unless otherwise specified in the Order, the price includes all packaging, handling and transportation costs, labor, insurance, customs duties, fees and taxes (including all sales, use, VAT or excise taxes). Pricing set forth in an Order is fixed and firm for purposes of that Order.

(b) Upon delivery of the Work, Seller shall promptly remit correct and complete invoices in the manner proscribed in the Order. Unless otherwise stated in the Order, payment terms are net 60 days from receipt of a correct and complete invoice. Seller’s cash discount privileges to Buyer shall extend until payment is due.

5. CHANGES: Buyer reserves the right, at any time prior to shipment of goods and performance of services (as applicable), to direct changes within the general scope of the Order, including quantity, part number, delivery location and delivery date. Seller agrees to promptly make such changes and avoid unnecessary related costs. Any difference in price or time of performance resulting from such changes shall be equitably adjusted subject to Buyer’s receipt of sufficient documentation thereof. The Order may only be changed by written agreement with Buyer’s authorized purchase representative. No adjustment of any kind shall be afforded to Seller with respect to changes made necessary by Seller’s fault, including defective Work.

6. WARRANTY: Seller expressly warrants that all Work covered by the Order will conform to the specifications, drawings, samples, or descriptions furnished to or by Buyer, and will be merchantable, of good material and workmanship and free from defect. In addition, Seller acknowledges that Seller knows of Buyer’s intended use and expressly warrants that all goods covered by the Order which have been selected, designed, manufactured, or assembled by Seller, based upon Buyer’s stated use, will be fit for the particular purposes intended by Buyer. For any goods furnished under the Order that become defective good within 12 months (unless otherwise specified) after the date of receipt by Buyer, Seller shall either, at Buyer’s election and to Buyer’s satisfaction, remedy any and all defects or replace the defective goods/services at no expense to Buyer within 7 days of receipt of the defective Work or accept the defective Work for full credit and payment of any return shipping charges. Seller shall be fully responsible for any and all warranty work, regardless of third-party warranty coverage. Seller shall furnish additional replacement parts at the same prices, conditions and specifications delineated herein.

7. HAZARDOUS MATERIALS: Seller warrants that any and all chemical substances delivered under the Order shall, at the time of sale and delivery, be on the list of approved chemical substances published by governmental authorities with jurisdiction over Buyer (including U.S. authorities for U.S.-based operations and Canadian authorities for Canadian-based operations). Seller shall submit to Buyer, prior to and with each shipment, Material Safety Data Sheets prepared in accordance with such authorities’ regulations. Prior to and with the shipment, Seller will furnish to Buyer sufficient warning and notice in writing (including appropriate labels on goods, containers and packing) of any hazardous material that is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and its respective personnel of how to exercise such care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the goods, containers and packing shipped to Buyer.

8. CANCELLATION FOR DEFAULT: Buyer reserves the right to cancel the Order, in whole or in part, without liability to Buyer, if Seller (a) refuses or fails to deliver the Work or any installment thereof strictly within the time specified herein or any extension thereof granted by Buyer in writing, (b) fails to comply strictly with any provision of or repudiates the Order or so fails to make progress as to endanger performance of the Order in accordance with its terms, or (c) suspends its business or becomes insolvent or comes under the protection of to any law relating to bankruptcy, insolvency or relief of debtors. If Buyer requests adequate assurance of performance, Seller shall provide same within 10 business days.

9. CONFIDENTIAL INFORMATION: Except as may be otherwise expressly agreed in writing between the parties (e.g., in a signed nondisclosure agreement), Seller shall keep confidential, and not use for any purpose other than fulfilling the Order for Buyer, any Confidential Information. "Confidential Information" means any and all information (including data, know-how, tools, processes and resources) made available by or on behalf of Buyer in connection with the Order, whether verbally, in writing or otherwise, except information that Seller can prove (i) is or becomes generally known to the public, (ii) was, prior to disclosure, already known to Seller or (iii) is independently developed or acquired by Seller; in each of the foregoing cases, through no breach of any agreement with Buyer (including this Agreement) or other fault of Seller. If Seller is compelled to disclose Confidential Information to a court or government agency pursuant to a subpoena or other binding governmental order, Seller will first notify Buyer of such compelled disclosure to the extent and as soon as legally permitted, and provide reasonable assistance at Buyer's request to contest the disclosure. Seller shall not directly or indirectly disclose or allow the disclosure of any Confidential Information to any person who does not need to know such Confidential Information in order to fulfill the Order on behalf of Seller.

10. INDEMNIFICATION: Seller shall indemnify, hold harmless and, at Buyer's election, defend Buyer, its affiliates and all of their respective directors, officers, employees, agents, contractors and customers (collectively, "Indemnitees") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with (a) the Work; (b) negligence, willful misconduct, violation of laws and regulations applicable to Seller or the Work or breach of this Agreement on the part of Seller; or (c) actual or alleged infringement, misappropriation or violation of intellectual property rights by Seller or the Work. Seller shall not enter into any settlement comprising an admission of Buyer's fault or requirement for Buyer to take remedial actions without Buyer's prior written consent.

11. INSURANCE: Seller shall carry and maintain an insurance coverage program with commercially reasonable deductibles (retentions) and with financially sound and reputable insurers that is reasonably designed to insure against foreseeable claims related to the Work, including commercial general liability insurance (with product liability and completed operations liability). For Work to be performed on Buyer's property, Buyer reserves the right to require specific insurance coverages and to be named as additional insured prior to the commencement of such Work. Seller shall provide certificates of its insurance upon Buyer's request. Seller shall provide Buyer with 30 days' advance notice in the event of a cancellation or material change in Seller's insurance policies. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer, its affiliates and their respective directors, officers, employees, agents, contractors and customers.

12. FORCE MAJEURE: Any delay or failure of either party to perform its obligations hereunder shall be excused if and to the extent that caused by an event beyond the reasonable control of the party and without its fault or negligence, provided that notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within 5 days of the event's occurrence. During the period of such a delay by Seller, Buyer, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by Buyer and at the price set forth in the Order. If requested by Buyer, Seller shall, within 5 days of such request, provide adequate assurances that the delay shall not exceed 30 days. If the delay lasts more than 30 days or Seller does not provide adequate assurance that the delay will cease within 30 days, Buyer may immediately cancel the Order without liability.

13. REMEDIES: The rights and remedies reserved to Buyer in the Order shall be cumulative, and additional to all other or further remedies provided in law or equity.

14. SETOFF: In addition to any right of setoff provided by law, all amounts due Seller shall be considered net of indebtedness of Seller to Buyer and its subsidiaries. Buyer may deduct any amounts due or to become due from Seller to Buyer or Buyer's affiliates from any sums due or to become due from Buyer to Seller.

15. NO PUBLICITY: Seller will not refer to or use the names, trademarks or products of Buyer or its affiliates or their respective operations in any customer lists, publications, promotions or other media without Buyer's prior written consent.

16. COMPLIANCE: In connection with preparing, packaging, shipping and delivering the Work and otherwise fulfilling its obligations hereunder, Seller shall (a) comply with all federal, state/province and local laws and regulations applicable to Seller, the Work and Buyer's use of the Work (including those relating to immigration, anti-bribery and child labor); and (b) not discriminate by segregation or otherwise against any person (including employees and employment applications) on the basis of race, color, religion, sex or national origin by curtailing or refusing to furnish accommodations, facilities, services or use privileges offered to the public generally.

17. NO IMPLIED WAIVER: The failure of a party at any time to require performance by the other of any provision of the Order shall not affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any provision of the Order constitute a waiver of any succeeding breach of the same or any other provision.

18. NO ASSIGNMENT: Seller shall not assign or delegate its obligations under this Agreement without Buyer's prior written consent.

19. RELATIONSHIP OF PARTIES: Seller is an independent contractor of Buyer and nothing in this Agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party an authority to assume or to create any obligation on behalf of or in the name of the other.

20. GOVERNING LAW & VENUE; NO JURY TRIAL; ATTORNEY'S FEES. Any question, claim or controversy arising out of or related to this Agreement (a "Dispute") will be governed by and construed in accordance with the laws of the state or province in which Buyer is domiciled, without regard for any conflict of laws principles that would require application of other laws. Each party irrevocably and unconditionally (i) consents and submits to the exclusive jurisdiction of the courts located in (or, if none, nearest) the city of Buyer's domicile for the resolution of any Dispute and (ii) waives any claim that a Dispute has been brought in an inconvenient forum. In any legal proceeding related to the Order, the prevailing party in such action or suit shall be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such legal proceeding. EACH PARTY HEREBY VOLUNTARILY AND IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY DISPUTES.

21. MISCELLANEOUS.

(a) All notices, requests, consents, claims, demands, waivers and other communications hereunder other than routine administrative communications (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Order 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 overnight courier (with all fees pre-paid) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section. Seller must also send a copy of its Notices to legal@alterramtnc.com.

(b) For all Orders where Buyer is not Alterra Mountain Company, Alterra Mountain Company is an intended third-party beneficiary to, and may directly enforce, Buyer's rights under the Order.

(c) Heading titles are for reference purposes only. "Including" means "including without limitation".

(d) Provisions of these T&C that by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement, including confidentiality and indemnity obligations.

(e) This Agreement may only be amended or modified in a writing stating signed by authorized representatives of each party that expressly states the provision being amended or modified.

(f) This Agreement is drafted in the English language and any translation into another language is for reference purposes only. *Les parties aux présentes conviennent que cette entente soit rédigée en anglais.*

(g) If any provision of this Agreement is declared void or unenforceable, such provision shall be modified and enforced by the adjudicator in a manner that best achieves the parties' manifest intent and the remainder of this Agreement shall remain in full force and effect.

TERMS & CONDITIONS

[[END OF TERMS]]

Version Date: January 2019