



Manitowoc Supply Chain Agreement

TERMS AND CONDITIONS

This Agreement ("**Agreement**") is entered into this _____ day of _____, 200_, ("**Effective Date**") and is by and between Manitowoc Foodservice Companies, Inc ("**Manitowoc**") with its principal offices located at 2227 Welbilt Boulevard, New Port Richey, Florida 34655, and [_____ CoName] ("**Supplier**") with its principal offices located at [_____]. Manitowoc and the Supplier are hereinafter sometimes referred to individually as a "**Party**" or collectively as the "**Parties**".

WHEREAS, Supplier is engaged in the business of selling, managing and distributing the products ("**Products**") set forth on **Schedule A** annexed hereto and made part hereof.

WHEREAS, Manitowoc desires to designate Supplier as a vendor of the Products for Manitowoc' operating companies, divisions, affiliates and subsidiaries (individually, an "**Account**" and in the aggregate, "**Accounts**"), and Supplier will sell the Products to the Accounts on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties as follows:

1. **Designation of Supplier.** Manitowoc hereby designates Supplier as an approved vendor for the Products. Supplier will be the primary provider of Products identified in **Schedule A** for each Account. Manitowoc shall encourage the Accounts to purchase the Products from Supplier, but makes no representation or warranty that Accounts will purchase any determined quantity of Products from Supplier.
2. **Term.** The term of this Agreement (the "**Term**") shall commence on the Effective Date, shall remain in effect for a term of (____) years (the "**Initial Term**") and shall renew automatically for successive renewal terms of sixty (60) days each, unless either Party signifies in writing its intent not to renew thirty (30) day prior to the expiration of the Initial Term or any subsequent renewal term. Manitowoc shall have the right to terminate this Agreement at any time without cause on sixty (60) days written notice to Supplier. The termination or expiration of this Agreement shall not relieve Supplier of its obligations to manufacture, deliver Products for which purchase orders are issued prior to termination, payments and credits hereunder, product liability, indemnifications, parts availability, sales record retention, insurance requirements, product recall obligations or any obligation which by its nature is intended to survive such termination or expiration. If this Agreement is terminated for any reason, the Accounts shall retain all rights in and to any Products, and any special tooling.
3. **Products; Quality Assurance**
 - (a) The Products covered by this Agreement are manufactured by Supplier and conform to the Supplier's Product specifications and performance criteria and drawing reference set forth in **Schedule A** annexed hereto ("**Specifications**"). Manitowoc and/or an Account may change the Specifications in its sole discretion from time to time. Supplier shall not materially change the Products' Specifications unless Supplier has provided Manitowoc with at least ninety (90) days' prior written notice stating the type of material change to be made to the Products. If Manitowoc is not satisfied, in its sole discretion, with the material changes, the parties shall then meet within fifteen (15) days and negotiate in good faith to reconcile their differences. When **Schedule A** has been changed to reflect new Specifications, all references herein to the Products shall be deemed automatically to include such changes. Supplier shall offer to Manitowoc for inclusion in the Products any design improvements or additional features as may be developed by Supplier during the term of this Agreement. Specifications given by Manitowoc and/or an Account shall not constitute a warranty, express or implied, by Manitowoc and/or an Account to Supplier against any

claims whatsoever; and Manitowoc and/or an Account shall not be responsible to Supplier in any way, as indemnitor otherwise, for or on account of any such claims or liability.

- (b) Manitowoc reserves the right to review Supplier's performance under this Agreement. Supplier shall promptly furnish to Manitowoc all information or material that Manitowoc may reasonably request to determine if Supplier meets current standards and Specifications. Supplier shall promptly notify Manitowoc of the happening of any event or the change of any circumstances that could affect Supplier's ability to perform under this Agreement. Manitowoc shall have the right, following reasonable notice, to inspect during normal business hours the Supplier's facilities. Upon Manitowoc' request, Supplier shall ship to Manitowoc, freight prepaid by Supplier, samples of Products in such reasonable quantities for testing to determine compliance with the Specifications, which testing shall be at Supplier's reasonable expense. Supplier will work toward a quality process that will provide results delivered to Manitowoc to avoid the need for an onsite inspection.

4. Purchase Prices; Payment; Purchase Orders

- (a) The purchase price (the "**Purchase Price**") for the Products purchased by an Account for the Initial Term of this Agreement shall be the amounts set forth on **Schedule B** annexed hereto, subject to the discounts and rebates set forth on **Schedule B** if the Total Sales (as hereinafter defined) volumes set forth on **Schedule C** annexed hereto are met. All prices shall be stated in United States dollars. On a monthly basis, Supplier shall submit to an Account an electronic summary bill ("**Summary Bill**"), which includes, but is not limited to prices, taxes, fees, freight, delivery location and Account identification number. The Account shall submit to Supplier all credits due to the Account or any changes to the Summary Bill on a monthly basis. No invoices shall be paid unless Product is received by the Account. Unless otherwise set forth on **Schedule B**, payment for Products shall be made prior to the 50th day after delivery and receipt of a correct invoice for such Product ("net 50 days") or shall be made at the Purchase Price less a cash discount of two (2%) percent if paid within 10 days ("2%/10 days"). Delivery terms for Products shall be F.O.B. destination (unless otherwise identified in writing by Manitowoc or an Account), all packaging and preparation included, freight third party billed. Title and risk of loss shall pass from Supplier to Account upon acceptance of delivery at Account's loading dock, as evidenced by the signature of an authorized representative of Account, subject to timely later rejection of defective, damaged, rejected or unordered Products as set forth in Section 5(b) below. No interest shall be paid on invoices for Product, and no storage charges shall be incurred by an Account.
- (b) Supplier shall maintain the Purchase Price unchanged during the Initial Term. Notwithstanding, the Parties shall use reasonable efforts to agree with respect to any price adjustments which may be made and shall do so in accordance with the formula set forth on **Schedule D**. New part numbers added to the Products sold by Supplier shall meet the same cost structure as the parts prices in **Schedule B**.
- (c) Supplier acknowledges and agrees that each Account (i) shall be solely responsible to Supplier for payment of the Purchase Price it being understood that Manitowoc is not a Party and (ii) shall be responsible for establishing its own creditworthiness with Supplier and Supplier shall be responsible in each case for investigating and determining the creditworthiness of each Account. Each Account and Authorized Purchaser (defined in Section 14 below) shall be a third party beneficiary of this Agreement and shall be entitled to enforce the rights of Manitowoc hereunder.
- (d) Supplier shall provide continuous opportunities to Accounts and Manitowoc for shared savings to improve Product, freight and/or account operations costs. Supplier shall also provide technical support and resources to support Manitowoc' value engineering programs.
- (e) Supplier shall sell to an Account and the Account shall purchase from Supplier, such quantity of Products as each Account, in its sole discretion, shall determine pursuant to a purchase order ("**Order**") submitted to Supplier from time to time during the term hereof. Each Account shall transmit orders for Products by written Order delivered to Supplier specifying the quantities of the Products to be purchased, the date for shipment and place of destination. All Orders for Products will be placed by an Account on the Account's standard form of purchase order as the same may exist from time to

time. In the event of any conflict between the terms and conditions of any Order and the terms and conditions of this Agreement, this Agreement shall govern. An Account shall have the right at no additional cost to (a) vary the quantity of any Order by 20% by written notice to Supplier given at thirty (30) days prior to the scheduled shipping date of such Order and (b) delay the shipping date of any Order by up to thirty (30) days by written notice to Supplier given at least fifteen (15) days prior to the original scheduled shipping date.

5. Shipment and Delivery; Alternate Source; Inventory Management

- (a) All Products shall be (i) suitably packed or otherwise prepared by the Supplier for shipment to prevent damage, to obtain the lowest transportation and insurance rates, and to meet the carrier's requirements, (ii) shipped in accordance with the instructions on the Order and expenses incurred due to failure to comply with these terms will be the responsibility of Supplier. Supplier name, complete ship to address and Order number must appear on all invoices, bills of lading, packing slips, cartons and correspondence. Bills of lading are to be attached to invoices submitted, showing carrier, number of cartons and weight and date of shipment. Packing slips will accompany all shipments listing contents of shipment in detail.
- (b) Manitowoc and Account may reject any delivery or cancel all or any part of any order if Supplier fails to make delivery in conformity with the terms and conditions hereof including, without limitation, any failure of Products to conform to the Specifications and performance criteria published by Supplier for the Products. Manitowoc' or Account's acceptance of any non-conforming delivery shall not constitute a waiver of its right to reject future deliveries. In the event that Supplier (a) fails to supply the Products and/or (b) fails to supply any Product meeting Specifications and/or (c) fails to meet Account's delivery schedules and/or delivery requirements, and Supplier does not provide a comparable quality substitute (for which substitution Supplier will assume any expense and price differential) then Account may, in its sole discretion, purchase the Product from another supplier as an alternate source as Account, in its sole discretion, deems necessary. In such event, Supplier shall reimburse Account for any additional costs and expenses incurred by Account in purchasing the Product from such other supplier as an alternate source. Upon identification and notification of defective Products or nonconforming shipments, Account shall receive full credit either for scrap or return which credit shall include full costs paid to Supplier, together with shipping, processing and related costs, if applicable. Within one week of the shipment of the defective Product, Supplier shall submit to Account a written explanation of the root cause and corrective actions implemented to prevent reoccurrence.
- (c) It is not the intent of Manitowoc or the Accounts to dictate the amount of inventory that Supplier shall carry during the Term. Each Account will provide Supplier with the best information on a timely basis as to average usage and potential abnormal demands. It is the responsibility of Supplier to maintain enough product to meet an Account's projected needs in the delivery cycles agreed upon. Supplier shall provide consignment material as requested by an Account to be placed on such Account's property, but not billed until used. The parts on consignment will be mutually agreed. Inventory will be released as agreed with each Account location.

6. Allowances; Online Accounting; Record Retention

- (a) In consideration for its services hereunder and designation of Supplier as an Manitowoc vendor, Supplier agrees to pay to Manitowoc a monthly volume allowance ("**Monthly Volume Allowance**") equal to the percentage of "Total Sales" (as hereinafter defined) set forth on **Schedule C**. "**Total Sales**" shall mean the Volume (as hereinafter defined) for the preceding month multiplied by the applicable Purchase Prices paid by all of the Accounts, in the aggregate, prior to any prompt payment discount. "**Volume**" shall mean, for each month during the Term, the sum of all Products (i) ordered and paid for by all of the Accounts in the aggregate during such period or (ii) paid for in such period if ordered during a prior period.
- (b) On a monthly basis, Manitowoc shall calculate and invoice Supplier (the "**Allowance Invoice**") for the Monthly Volume Allowance based on Total Sales during the immediately preceding quarter using the Sales Report (see immediately below) prepared by Supplier.

- (c) Supplier shall prepare a monthly sales and allowance report ("**Sales Report**") detailing the Products sold in the preceding calendar month. Supplier shall send the Sales Report within five (5) days following the end of each calendar month to the Manitowoc address set forth on **Schedule E** annexed hereto and to the Purchasing contact in each Account. Allowance Invoices shall be paid within 30 days, and if not so paid, shall bear interest at the rate of 1.5% per month. Payment shall be made to the Account designated on the Allowance Invoice or by check payable to Manitowoc.
- (d) Supplier will provide at Supplier's website an online accounting twenty-four (24) hours per day, seven (7) days per week, of invoices, pricing, volumes and transaction history by Account location along with summary report capability updated daily and accurate within three business days. Supplier will provide each Account with access to its password protected Web site to review Product transactions per Account location.
- (e) Supplier agrees that it will maintain a true and correct set of records pertaining to all sales of Products to each Account for a period of at least three years after the date of sale.

7. **Representations, Warranties, and Covenants.** Supplier represents and warrants to Manitowoc that (a) it has the requisite power, authority and authorization to enter into this Agreement and carry out the terms hereof, (b) the person signing this Agreement on behalf of Supplier has the requisite corporate authority, (c) the execution, delivery and performance of this Agreement is not prohibited or impaired by any judgment or other agreement to which Supplier is a party or by which it is bound, (d) Supplier is and shall at all times during the Term be in possession of all approvals necessary to manufacture, render, process, package, label, deliver and sell the Products; (e) Supplier has and will have the right to render, sell and deliver all Products to be supplied pursuant to an Order, (f) Supplier has and will have ownership rights necessary to convey good and marketable title to the Products, free and clear of all liens and encumbrances upon delivery of the Products to Account, and (g) Supplier shall at all times comply with "Applicable Law" (defined herein) pertaining to the manufacture and sale of the Products. "**Applicable Law**" shall mean any applicable statute, law, regulation, ordinance, order, decree or the like promulgated by any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, or judicial or administrative body, whether federal, state, or local or in a foreign country having jurisdiction over the Parties (collectively, a "**Governmental Authority**").

8. **Audit.** Manitowoc shall have the right from time to time to have a third party audit Supplier's records to determine if Supplier is in compliance with the terms hereof. If any audit discloses any overcharges or underpayments by Supplier, it shall promptly make restitution to Manitowoc and/or Accounts therefore, plus interest at the rate of 1.5% per month. If such restitution payments are greater than the cost of the audit, Supplier shall be liable for the cost of the audit.

9. **Most Favored Customer.** If at any time during the Term Supplier offers a combination of lower prices and/or greater allowances, incentives, rebates, discounts or anything else of value whatsoever (collectively, "**Discounts**") as compared to the Purchase Prices to any other Similar Customer (as defined below), the same Discounts shall be offered to Manitowoc and the Accounts and this Agreement and any and all outstanding Order shall be automatically amended, without further action of the parties, to provide such Discounts from the date the same are offered to such Similar Customer. "**Similar Customer**" shall mean, as compared to Manitowoc and the Accounts, a customer of Supplier purchasing a similar or lesser volume of Products or products similar to the Products and subject to similar material terms and conditions, including contract duration; however, no customer having an "exclusive" relationship with Supplier shall be deemed a Similar Customer.

10. **Time Is of the Essence; Service Level.** Each Account will establish in conjunction with Supplier for each part number on **Schedule A** or future added part numbers an appropriate release quantity and number of days from issue of each release to receipt on the respective Account's loading dock. The release shall include a designated release number, Product description/designation, quantity, box quantity and delivery date. Time is of the essence with respect to deliveries and the Accounts may suffer financial loss if Supplier fails to maintain a service level ensuring that Products are timely delivered by Supplier to Accounts (i) within Supplier's applicable lead times and (ii) in proper condition (proper quality, quantity and type).

11. Product Warranties.

- (a) Supplier warrants to all Accounts that the Products shall be processed, manufactured and labeled using first-class manufacturing practices, in accordance with Applicable Law. Supplier shall have handled the Product properly up to the time of acceptance by the authorized representative or designated agent of the respective Accounts.
- (b) Supplier warrants to each Account that at all times the Products will conform to applicable specifications, drawings, part numbers, samples, prototypes or other rendered descriptions and are, or shall be, fit and sufficient for the purpose intended; that they are merchantable, of the highest quality, and free from defects, whether patent or latent in materials, workmanship, design and production; and that Supplier service level shall be performed in a professional and workmanlike manner in conformity with applicable laws and the highest standards of quality in the industry and in a manner so as to ensure the safety of all persons and the preservation of property. All parts must meet WEEE/RoHS requirements as applicable for parts shipped in Manitowoc affiliate products to the European Union countries. The foregoing warranties shall be in addition to all other warranties made by Supplier, express or implied.
- (c) If the Products or any part of them do not comply at any time during the Term with subsections (a) and (b) above, an Account shall have the right to reject them or to cancel the Order or to retain the Products and recover the damages from the Supplier for such breach of warranty and, in such event, continued use of such Products by Account shall not constitute a waiver of Supplier's breach of warranty.
- (d) All warranties shall succeed to each Account, its permitted successors, assigns, and all persons, including subsidiaries of Account, to whom the goods may be resold. All warranties shall survive termination of this Agreement.
- (e) Notwithstanding anything to the contrary contained herein, in the event of an Epidemic Failure, as defined herein, Supplier will be fully responsible for all costs associated with the repair or replacement of Products. "**Epidemic Failure**" shall mean the failure of a specific part during any three (3)-month period in excess of three percent (3%) of the total number of Products sold to an Account during the same three (3)-month period or more than one percent (1%) in the first six (6) months.
- (f) Supplier's certificate of warranty for the Products is annexed hereto on **Schedule F**. Supplier warrants that all Products shall be free of defects in workmanship or materials for a period of 18 months from manufacture or at least 12 months from delivery, whichever is longer.

12. Default.

- (a) This Agreement may be terminated by the non-defaulting Party, at its election, upon five (5) business days' written notice (or such other period as specified below) to the defaulting Party upon the occurrence of any of the following events:
 - (i) The defaulting Party fails to perform for whatever reason a material term hereof and such failure is not cured within thirty (30) days after written notice from the non-defaulting Party specifying the nature of such failure is received by the defaulting Party;
 - (ii) The defaulting Party is adjudicated insolvent by any court or tribunal, or files a voluntary petition in bankruptcy, or enters into an arrangement with its creditors, or applies for or consents to the appointment of a receiver or trustee of itself or its property, or makes an assignment for the benefit of creditors, or suffers or permits the entry of an order adjudicating it to be bankrupt or insolvent or appointing a receiver or trustee of itself or its property or suffers an involuntary petition in bankruptcy filed against it to remain undischarged or stayed for a period of sixty (60) days, in which event, no notice to the defaulting Party shall be required and the Agreement shall immediately and automatically terminate;

- (iii) A direct competitor of Manitowoc acquires either five percent (5%) or more of the capital stock or substantially all of the assets of Supplier or any of its affiliates; and/or
- (iv) If any Products are contaminated or otherwise threaten to cause, or result in, a serious health-related incident, then Manitowoc may terminate the Agreement immediately without notice.

13. Spare Parts; Discontinued Products; New Products; Tooling

- (a) Supplier agrees that it shall maintain an inventory of replacement parts sufficient to keep the Products operating properly on a global basis and will make such parts available to the Accounts. Supplier shall establish a list of recommended spare parts, assemblies and tools required for the servicing of Products sold to an Account (collectively, the "**Spare Parts**"). Supplier shall make available for purchase by the Account Spare Parts for a period of ten (10) years from the date the Product is sold to an Account with respect to all functional and non-functional parts. Supplier shall publish the standard list prices for Spare Parts from time to time. An Account may purchase Spare Parts at a sixty-five percent (65%) discount from Supplier's published list prices, and Supplier shall provide packaging for parts approved by an Account. If requested by the Account, Supplier shall provide the Account with branded parts.
- (b) Any defective or nonconforming Spare Parts received by an Account from Supplier shall be replaced by Supplier at no additional charge. Supplier shall supply together with deliveries of Spare Parts, all cartons, packing materials and literature necessary to repack repaired or returned Products, in an amount equivalent to Supplier's cost for such items.
- (c) In the event that a model of Product or parts of any model of a Product shall be discontinued or become obsolete, Supplier shall advise Manitowoc and provide Manitowoc and the Accounts an opportunity to purchase a reasonable supply thereof. Manitowoc shall advise Supplier within ninety (90) days of the notice from Supplier with respect to discontinued or obsolete models or parts, the number of Products or replacement parts Manitowoc may require, and Supplier will use its best efforts to make available to Manitowoc that number of Products or parts. This provision shall not relieve Supplier of its obligations under subsection (a) above.
- (d) Supplier shall provide, at no additional cost, any technical or installation information requested to support an Account's service network.
- (e) Supplier at its own expense shall furnish, keep in good condition, insure and replace when necessary all general tooling and other materials necessary for the performance of this Agreement. Manitowoc shall own any tooling required by this Agreement and used by Supplier solely for the manufacture of the Products. Upon the termination of this Agreement, Supplier shall promptly ship the tooling to the location designated by Manitowoc.

14. Product Recall And Retrofit. At its sole cost, Supplier shall be responsible for obtaining all regulatory approvals for the Products from the Governmental Authorities. In the event that any Product is found to contain a defect or product hazard or not to be in compliance with any Applicable Law, standard or requirement so as to require or make advisable that such Product be reported, repaired or recalled, Supplier shall maintain a Product recall procedure for any such failure. Pursuant to such procedure Supplier shall undertake all obligations imposed upon it by such Applicable Law, and shall file all necessary papers, corrective action programs and other related documents; provided, however, that at Supplier's expense Manitowoc shall cooperate with and assist Supplier in any such filing and corrective action, and provided that nothing contained in this Section shall preclude Manitowoc from taking such action as may be required of it under Applicable Law. Supplier shall perform all necessary repairs, modifications, recalls or replacements at its sole expense. In the event Manitowoc, an Account or Supplier reasonably determines it is necessary to recall or field retrofit any Products manufactured or provided by Supplier to an Account, its dealers or direct customers (collectively, "**Authorized Purchasers**") (i) for any reason bearing on their safety, or (ii) for any material non-conformance of any Product with the Specifications therefore in effect at the time such Product is sold, Supplier hereby agrees to comply with the recall and/or retrofit procedures reasonably established from time to time by each Account. Furthermore, Supplier agrees to bear all costs and expenses incurred by it in complying with such recall or field retrofit procedures.

15. Intellectual Property; Patents

- (a) Supplier hereby acknowledges that Manitowoc or its affiliates is the owner of the Manitowoc and Manitowoc affiliate labeling, trademarks, distributive works, logos, pictures or designs, or other proprietary designations of the Account or its affiliates (the "**Manitowoc Marks**") and has exclusive rights to use such marks within the United States and internationally. Supplier will not use Manitowoc Marks or names including Account names in any advertising, publicity, promotional material, press releases, sales material or as a reference or disclose the existence of this Agreement, or the terms hereof, without obtaining Manitowoc' prior written approval of such use.
- (b) Supplier represents that the Products do not and shall not infringe upon any trademark, patent, copyright or any similar property rights. Supplier shall defend and indemnify Manitowoc, each Account, their respective officers, directors, employees, agents, Authorized Purchasers and their affiliates from and against all costs, damages and expenses (including reasonable attorneys' fees) incurred in connection with any claim, demand, suit or proceeding based on a claim that the marketing, advertising, use or sale of any Product constitutes an infringement of any patent, trademark, copyright or other proprietary right of any third party as to the Products. Supplier at its own expense and option shall either (i) procure for the Account and its Authorized Purchasers the right to continue using or selling the Products, (ii) replace them with non-infringing Products, or (iii) accept return of the enjoined Products and refund the full purchase price (and shipping costs). This paragraph 15 (b) shall not apply to the extent any infringement relates solely to Development as defined in paragraph 15(c) below.
- (c) As part of the consideration for entering into this Agreement, Supplier agrees that all information, including documentation related to the Products and other data or materials generated or developed by Manitowoc or jointly by Supplier and Manitowoc under this Agreement related to the Products or otherwise furnished by Manitowoc to Supplier before or during the term of this Agreement ("Development Information") shall be and remain the sole property of Manitowoc. Furthermore, Supplier agrees that any and all inventions and/or innovations developed, derived or conceived by Supplier or others under Suppliers direct or indirect control relating to development and/or Products under this Agreement (whether or not patentable and whether made solely by Supplier or jointly with others) shall be and remain the exclusive property of Manitowoc or its nominees (collectively "Developments"). Supplier shall promptly inform Manitowoc of any Developments which it or others under Suppliers direct or indirect control develops, derives or conceives during the term of this Agreement. Supplier will promptly assist Manitowoc in all of its efforts seeking to protect any and all intellectual property in such Developments, at Manitowoc' expense, in any and all countries of the world. Development Information shall be included as Manitowoc' Confidential Information as defined in paragraph 17 of this Agreement and shall be treated by Supplier in the same fashion as Manitowoc Confidential Information therein.
- (d) Supplier specifically agrees that all copyrightable material generated or developed under this Agreement related to the activities described herein shall be considered works made for hire and that such material shall, upon creation, be owned exclusively by Manitowoc. To the extent that any such material, under applicable law, may not be considered works made for hire, Supplier hereby assigns to Manitowoc the ownership of copyright in such materials, without the necessity of any further consideration, and Manitowoc shall be entitled to obtain and hold in its own name all copyrights in respect of such materials.
- (e) If and to the extent Supplier may, under applicable law, be entitled to claim any ownership interest in the Development Information, Inventions, Innovations or other data or materials generated or developed by Supplier under this Agreement and related to the Developments and/or Products, Supplier hereby transfers, grants, conveys, assigns, and relinquishes exclusively to Manitowoc all of Supplier's right, title, and interest in and to such Developments, including, but not limited to, rights granted under patent, copyright, trade secret, trademark, and/or common law, in perpetuity or for the longest period otherwise permitted by law.
- (f) Supplier shall perform, or cause others under Supplier's direct or indirect control to perform, any reasonable acts that may be deemed necessary or desirable by Manitowoc to evidence more fully

transfer of ownership of all rights, title and interest in and to such Developments under this Addendum to Manitowoc to the fullest extent possible, including, but not limited to, the making of further written assignments in a form determined by Manitowoc.

- (g) Supplier hereby represents and warrants that it has full right and authority to perform its obligations and grant the rights and licenses herein granted, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement. Supplier further covenants and agrees that it shall not enter into any such agreements in the future without advanced written agreement from Manitowoc.
- (h) Supplier agrees that it shall have and maintain, during performance of this Agreement, written agreements with all employees, contractors, or agents engaged by Supplier in performance hereunder, granting Supplier rights sufficient to support all performance and grants of rights by Supplier under this Agreement. A copy of such agreements shall be provided to Manitowoc promptly upon request, along with a statement from Supplier identifying the individuals and/or entities that have signed said agreements.

16. Financial Requirements. At all times during the term hereof, Supplier must satisfy the reasonable financial requirements established or modified by Manitowoc. Upon request made by Manitowoc at any time during this term hereof, Supplier agrees to submit to Manitowoc within thirty (30) days from the date of request, sufficient financial information to demonstrate Supplier's compliance with such financial requirements.

17. Confidential Information. Each Party acknowledges that during the term of the Agreement it may obtain or have access to information about the other Party that is proprietary or confidential in nature ("**Confidential Information**"). Confidential Information may be used by the Parties only in carrying out the purposes of the Agreement. Each Party agrees that it will maintain the confidentiality of and not disclose to third parties or use, without the prior written consent of the other Party, the other Party's Confidential Information (except to make necessary disclosures to the disclosing Party's employees, lenders, counsel, accountants, or consultants). Each Party shall be responsible for the unauthorized disclosure of any Confidential Information by its employees and agents. For purposes of this Section, Confidential Information does not include information that (i) now is, or hereafter becomes, publicly known through no fault of the receiving Party, (ii) was in the possession of the receiving Party before or at the time of disclosure and was not previously obtained from the other Party, or (iii) otherwise lawfully becomes available to the receiving Party from another source. The obligations of this Section shall survive termination of the Agreement for a period of five (5) years.

18. Product Liability; Indemnity; Insurance.

- (a) Supplier assumes entire responsibility for the safety of all Products it supplies hereunder. Supplier agrees to take reasonable steps to directly warn users of dangers associated with Products. Supplier's indemnification of Accounts and Authorized Purchasers includes (i) any claim for damages, injury or loss resulting from use or operation of any Product supplied hereunder, (ii) any failure by Supplier to comply with any Applicable Law, and (iii) a breach by Supplier of any covenant of term of this Agreement.
- (b) Supplier hereby agrees to severally indemnify, defend and hold harmless all of Manitowoc, the Accounts, the Authorized Purchasers, and their respective affiliates, directors and officers (individually, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") from and against, and accepts responsibility for, any claim, demand, cause of action, liability, loss, damage, cost or expense whatsoever (collectively, a "**Claim**"), including without limitation reasonable attorneys' fees, cost of settlement and any product recalls, which arises directly or indirectly out of or is in any way associated with (a) a defect in the design, manufacture, materials or assembly of the Products regardless of whether such Claim arises within or beyond any warranty period, (b) personal injuries or property damage in the nature of product liability, (c) any failure of the Product to conform to the representations of Supplier set forth herein or otherwise made in writing by Supplier in connection with the sale and delivery of the Products, and (d) any actions or inactions of Supplier, its employees, agents or subcontractors. This indemnity shall survive termination of this Agreement and shall be in addition to all other indemnities made by Supplier. Supplier further

agrees to pay all costs and expenses, including but not limited to attorneys' fees, which may be incurred by the Indemnified Parties in connection with enforcing any provisions of this indemnity.

- (c) Supplier shall carry at its expense during the entire term of this Agreement and for three (3) years after its termination, commercial general liability insurance written on an occurrence basis, including without limitation, blanket contractual liability coverage, broad form property damage, fire damage, legal liability coverage, independent contractor coverage, personal injury coverage, operations and products liability coverage, with a combined single limit of not less than five million dollars (\$5,000,000) per occurrence for personal injury and property damage. Supplier shall maintain umbrella/excess liability insurance on an occurrence basis at least equivalent to the underlying commercial general liability insurance and which is at least as broad. The amounts of insurance required herein may be satisfied by Supplier purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than \$5,000,000 combined single limit and aggregate limit. Coverage should be placed with a reputable or financially responsible carrier or carriers with a minimum A.M. Best rating of A+. Supplier shall cause its insurers to endorse the required insurance hereunder to waive any rights of subrogation against the Indemnified Parties. This insurance shall name the Indemnified Parties as additional insureds under an "Additional Insured-Vendors" endorsement, shall be primary over any insurance maintained by Indemnified Parties, and shall provide that should any of the policies described herein be canceled before the expiration thereof, the insurer shall endeavor to mail to Manitowoc at least thirty (30) days' prior written notice of any cancellation or reduction in coverage. Upon execution of this Agreement, and thereafter ten (10) days prior to any renewals, Supplier shall provide Manitowoc with a Certificate of Insurance evidencing the coverage herein required, and identifying the "Certificate Holder" as Manitowoc Corporation. Supplier shall mail all Certificates of Insurance to: Manitowoc, Attention Mr. Thomas Tetlow. Should Supplier fail to adhere to the requirements of this subsection (c), Manitowoc may order any such insurance and charge the cost thereof to Supplier, which amount shall be due and payable by Supplier upon demand. A form of Supplier's Certificate of Insurance is attached hereto as **Schedule G**.
- (d) By requiring insurance herein, Supplier does not represent that the coverage and limits will necessarily be adequate to protect the Indemnified Parties, and insurance effected or procured by Supplier shall not reduce or limit its contractual obligation to indemnify and defend the Indemnified Parties for Claims as set forth above. Supplier and Manitowoc agree to fully cooperate, participate and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for the issuance of the insurance policies required hereunder, in all areas of safety, claims reporting and investigating, and audit procedures.
- (e) In the event that Supplier has any self-insured retentions or deductibles under any of the minimum required coverage, Supplier must identify on the Certificate of Insurance the nature and amount of such self-insured retentions, deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles shall be the sole responsibility of Supplier and are subject to approval by Manitowoc in its reasonable judgment.

19. Affirmative Action and Supplier Diversity Program. Unless this contract is exempted by the Rules and Regulations of the Secretary of Labor issued pursuant to Section 201 of Executive Order 11246, there is incorporated herein by reference, subsections 1-7 of Section 202 of Executive Order 11246, as amended, and the provisions set forth at 41 C.F.R. § 60.741.5(a) and 41 C.F.R. § 60-250. Supplier, if covered by Executive Order 11246 and its regulations, by execution of this Agreement, hereby certifies that it is in full compliance with Executive Order 11246, as amended, and 41 C.F.R. § 60-250, 60-741, and that it will remain in full compliance for the term of the Agreement. Supplier shall post in conspicuous places available to employees and employment applicants notices setting forth the provisions of this clause. In the event Supplier is a certified minority- and/or women-owned business, Supplier shall submit a copy of its relevant certification prepared by a certifying organization. If, in connection with the manufacture and distribution of the Products, Supplier has business relationships with certified minority or women-owned businesses, and maintains records with respect thereto, Supplier shall, (i) submit a list of such certified minority- or women- owned businesses together with a copy of the relevant certification prepared by a certifying organization, and (ii) report the estimated annual dollar amount impact thereof.

20. Notices. All notices, other than routine communications, shall be in writing and shall be deemed to be given under this Agreement when hand delivered, when transmitted by confirmed facsimile or 1 business day after being given to an overnight courier or 3 business days after the day of mailing, when mailed by United States mail, certified mail, return receipt requested, postage prepared, and addressed to the appropriate notice address set forth on **Schedule E**.

21. Choice Of Law. This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the law of the State of Delaware, USA, as such law applies to contracts signed and fully performed in such State. The parties agree to comply with the provisions of all laws, orders, rules and regulations applicable to this Agreement, including applicable export control laws and regulations of the United States. The terms of the United Nations Convention on the Sale of Goods shall not apply to this Agreement.

22. Entire Agreement. All agreements between the Parties for the sale of the Products shall be governed exclusively by the terms and conditions set forth herein, except as the Parties may otherwise agree in a writing duly executed by their respected duly authorized representatives which expressly references this Agreement. This Agreement, together with all exhibits and schedule annexed hereto, contains the entire agreement of the Parties hereto.

23. Assignment. This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, executors, administrators, successors, and permitted assigns and this Agreement, any claims for money damages arising, and/or any payments due hereunder, may not be delegated or assigned by either Party without the prior written consent of the other. Any such assignment without prior written consent will be void.

24. Waiver; Binding Effect. No waiver of any breach or default of the terms hereof will constitute a waiver of any other or further breach or default hereof. The terms of this Agreement may be waived only by a written instrument expressly waiving such term or terms and executed by the Party waiving compliance. This Agreement and the attached schedules and exhibit, shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the Parties.

25. Construction Of Agreement. Any Section headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement. Unless the contrary clearly appears from the context, for purposes of this Agreement, the singular number includes the plural number and vice versa; and each gender includes the other gender. Each and every exhibit or schedule to this Agreement is included in it and attached for all purposes by the reference in this Agreement to the specific exhibit or schedule.

26. Independent Contractor Status. The Parties acknowledge that they are each independent parties and neither shall be deemed an agent of the other or have authority to bind the other in any manner whatsoever.

27. Force Majeure; Impossibility Of Performance. Neither Party shall be responsible to the other for any failure to carry out its obligations under this Agreement, other than the obligation to pay funds due, to the extent and for the length of time that performance is rendered impossible owing to acts of nature, force majeure or other circumstances of substantially similar character beyond the reasonable control of, and not reasonably foreseeable by, the affected Party. The affected Party shall use all reasonable diligence to remove or remedy the circumstances that prompted it to declare force majeure as quickly as possible. If either Party is rendered unable to perform by reason of force majeure for a period in excess of 120 days, then the other Party may terminate this Agreement upon written notice to the Party claiming force majeure.

28. Severability. Any term or provision hereof that is invalid, illegal, or unenforceable shall not affect the validity or enforceability or the remaining terms and provision hereof or the validity or enforceability of the offending term in any other situation or in any other jurisdiction.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by its duly authorized representative.

("Supplier")

MANITOWOC FOODSERVICE COMPANIES, INC

By: _____

By: _____

Name (Print) _____

Name: Thomas Tetlow

Its: _____

Its: Vice President of Purchasing

Schedule A

**Product Specifications per Account
(Sections 3(a) and 10)**

- **Reference to prints**
- **General standards**
- **Dimensions**
- **Materials**
- **Process requirements**
- **Industry standards to meet**
- **Tests that need to be completed**
- **Packaging requirements**

Schedule B

**Part Numbers, Pricing and Order Quantities
Discounts and Rebates**

(Section 4(a))

- **Lot sizes per Account per part number**
- **Any inventory or stocking requirements**

Schedule C

Total Sales volumes estimates:

(Sections 4(a) and 6(a))

SCHEDULE D

(Section 4(b))

The formula for potential price adjustments, utilizing published data accessible to both Parties, and including a hypothetical example:

Schedule E

**Notice Address
(Sections 6(c) and 20)**

If to Manitowoc:

**Manitowoc Foodservice Companies, Inc
2227 Welbilt Boulevard
New Port Richey, Florida 34655
Attn: Mr. Thomas Tetlow
Fax: 727-372-5709**

If to Supplier:

Attn: _____

Fax: _____

Schedule F

Supplier's Warranty for the Products

(Section 11(f))

Schedule G

Supplier's Certificate of Insurance

(Section 18(c))