



ORDER CONFIRMATION NO. 340010955

Mr. Ryan Hale
Lopez Foods - Cherokee
1300 S. Lake St.
Cherokee, IA 51012

February 28, 2022
AN/as

Re: Quotation No. 240057820-A / Purchase Order No. E125314

Dear Mr. Hale,

We are pleased to provide Order Confirmation No. 340010955.

Please take a moment to sign where indicated at your very earliest convenience, so that we may begin processing and fulfilling your order. Non-receipt of an executed order confirmation may delay processing your order.

We thank you for the trust you have shown in our company, and we look forward to meeting your expectations for a successful completion of this project.

If you have any questions or concerns in this regard, please do not hesitate to contact me as soon as possible, so that we may keep this process moving forward.

Sincerely,

Andrew Nichols

Andrew Nichols
Area Product Sales Manager
GEA Food Solutions

cc: Peter Liljegren, GEA
Barbara Kueter, GEA

GEA Food Solutions North America, Inc.
16005 Gateway Dr., Suite 100, Frisco, TX 75033
Tel +1 800-388-2601 Fax +1 214-618-1200
www.gea.com

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Lopez Foods Cherokee (Oklahoma City, OK)

APPLICATION DESCRIPTION

Any performance data relating to capacities and/or quality, and/or any data relating to weights, dimensions, recipes, etc., are provided for information purposes only and do not create any responsibility or liability for GEA. The buyer shall not have any rights relating to such above meant data. Any guarantees requested by buyer may lead to an adjustment in price and/or delivery time.

General Data

Country of delivery	: USA
Voltage	: 480 V - 3 phase - 60 Hertz
Network configuration	: not relevant for this project
Options of manual and language	: 1 manual / 1 CD Rom / English
Pre Delivery Inspection	: By GEA Food Solutions
Installation / commissioning	: By GEA Food Solutions
Packing	: Case - seaproof
Certificate required	: No, UL components only

EQUIPMENT DESCRIPTIONS

CookStar Turbo 1000-90-160 3rd Gen.

Benefits

- 5-25% more capacity on the same footprint
- Improved quality - juicy inside, crispy outside with a perfect color
- Perfect temperature spread over the belt width
- Ultimate cooking flexibility - dry, steam, cook, roast, smoke your products in one oven
- Lower operating cost - spot-on and energy efficient process
- Improved food safety - improved operator interface with smart automation features



Technical Basics

The GEA CookStar Turbo 1000 Generation 3 combines the best of both worlds, the efficiency of horizontal airflow with vertical impingement airflow in the right spot of the oven.

A unique 3-phase cooking concept in a two-zone spiral convection oven – the best available now with respect to yield, product quality, productivity, and versatility.

Improved heat exchanger design, with a new industry standard in heating capacity and efficiency

Improved impingement and air flow optimization to optimize all the different cooking processes

Improved oven balance and improved zone separation - one process control system for steam-fresh air-exhaust

Perfect air draft system - automatic control - safe and energy efficient

Smart steam control - dewpoint controlled independent from external influences

Large size and simplified HMI - with smart automation features allow for less change-over time and more productivity with more secured food safety

Modular design - Future proof - change your configuration - reduced machine height Improved belt support & Endurlon belt support rails resulting in lower operating and maintenance cost

Shorter cook time allows for more production flexibility- less energy and more production cycles per week

Cooking temperatures are independently adjustable to a maximum of 250°C (482°F). Dew points can be set independent from each other to a maximum of 95°C (203°F). Efficient cleaning concept and features to secure maximum uptime and throughput through:

Independent dual CIP system, in-production belt presoak system & belt cleaning system & lecithin dip to prevent that products stick to the belt.

The combination of various 3rd Generation improvements results in more power (throughput) more precision (accuracy-variance and quality) and more performance (improved product quality, better color and yields with lower operating cost).

To allow future expansions the GEA CookStar 1000 Gen 3 is prepared for the application

SuperHeatSmoke, a patented concept to cook and smoke in one oven.

The machine meets the European CE standards as well as the ASME & PED pressure regulations.

As a result of constant improvement, pictures, drawings and specifications are subject to change. Some features shown can be options.

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Low oven temperatures:

In specific situations where oven temperatures below 130°C in combination with high dew points are applied it is recommended to reduce the incoming oil temperature of the thermal oil circuit to levels around 200°C (392°F) or lower. In case of lines with more than one oven/fryer/belt grill (thermal users) it is recommended to build in a mixing circuit in the thermal circuit.

Basic Data	Selection
CookStar version	CookStar Turbo 1000 3rd gen.
CookStar type	90-160
Maximum air temperature	250 °C
Heating source	Thermal oil
Turning execution	Clockwise
Total meters cable loom	40 m
Cooling of electrical cabinet	Included in standard
Belt type	Mesh width 11 mm
Belt support type	Endurlon blue easy recognizable
Product take over at outfeed	Extended main conveyor 550 mm
Required ceiling height	5830 mm
Product height detection	Yes, at infeed

Execution	Selection
Position operator panel	Infeed side right (B)
Beltwash blower	Yes
SuperHeatSmoke	No, will be ordered later
SuperHeatSmoke generator	No, will be ordered later
Position of smoke generator	To be clarified
Steam closing valves	Yes
Process Application Training	Yes

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Overview selections
CookStar Turbo 1000-90-160 3rd gen.
Extended main conveyor 550 mm
Product height detection at infeed
Internet Modem
Application training 3rd gen. CookStar Scope : one application specialist for 2 consecutive working days and approximately 2 days travelling. The 2 working days include start-up, recipes, and product optimization of 1-2 products, training of shift and cleaning personnel. Based on 10 working hours per day, 1 shift not in the weekend. Costs include working hours, local travelling, and lodging. Travel cost to the destination is not included and will be charged separately.

Exhaust fan x 2

2 x 7000016417

Overview selections
Exhaust fan x 2

GEA Machine Data Interface

Benefits The Machine Data Interface MDI is only a connection to the GEA Standard Interface CSI and does not process any data. The CSI has to be activated in the machine PLC.

Technical Basics

- Machine connection into Ethernet network for fast and reliable data transfer.
- Communication via a standard OPC server protocol.
- Clear installation and communication protocol documentation.
- Clear data path and type documentation.

Basic Data	Selection
Machine 1	New machine
Machine type 1 /serial number	CookStar 1000
Control system machine 1	GEA FS Controls

Overview selections
GEA Machine Data Interface for GEA controls, new equipment

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PRICE SUMMARY

Qty		Price in USD
1	CookStar Turbo 1000-90-160 3rd gen.	2,400,000.00
1	Exhaust fan x 2	Included
1	GEA Machine Data Interface	Included
Total Equipment		2,400,000.00
	Logistic Charges	Included
	Duties / Customs Region	Included
	Process Application Training	Included
	Installation and Commissioning	Included
Total Price		2,400,000.00

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Covid-19 Clause

“Due to current developments and measures taken globally, nationally and locally in connection with the World Health Organization’s declared public health emergency in respect of the COVID-19 pandemic, GEA’s offered goods and/or services can be negatively affected. Although GEA is taking actions to mitigate potential supply impacts, please be advised that our choice of suppliers / subcontractors, delivery lead-times, engineering and/or site services, quoted prices, etc. may be impacted due to the COVID-19 pandemic.

Such adverse effects may, in particular, be caused by or occur in response to actions taken by a government or public authority (including the imposition of embargoes or import or export restrictions, quarantine orders, travel restrictions or any other restrictions or prohibitions and the compliance by GEA or any of its sub-suppliers of any tier with corresponding laws or governmental orders, rules, regulations, directions, recommendations or precautions). The coronavirus pandemic and these effects may *inter alia* result in excessive illness rates of personnel, difficulties or increased costs in obtaining workers or goods, inability to transport goods or persons across borders, other travel restrictions or mobility impairments, personnel and/or material shortages, delays or other adverse circumstances affecting the supply of goods or services.

Accordingly, GEA reserves the right to require an extension of any stated time schedule and/or to charge extra reasonable costs in the event GEA’s time schedule is adversely impacted and/or GEA incurs additional costs due to any of the foregoing.”

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COMMERCIAL TERMS

Approximate Lead Time (leaving our factory in Europe):

Twenty-six to twenty-seven (26-27) working weeks from receipt of down payment, subject to receipt of purchase order no later than February 18, 2022. Order was secured on a promise of an October 2022 delivery. The down payment is due 10 days upon receipt of invoice. Present estimated lead time is approx. 48 weeks leaving our European Factory.

The exact number of weeks shall be available after the sign off date by Buyer of final line layout and functional specifications documents sent by Seller.

The final line layout and functional specifications documents are deemed to be signed off by Buyer, latest three days after the documents have been sent for sign off by Seller, provided Seller has not received notification otherwise.

Any delay in down payment and/or sign off of final layout shall give Seller the right to delay the subsequent milestones accordingly.

Note: Please allow 3 to 5 weeks for sea freight to your plant.

Delivery Terms: DDP via common carrier (Ocean / Truck)

** Delivery address to be confirmed by customer.*

Lopez Foods- Cherokee

Attn: Engineering Dept.

1300 S. Lake Street

Cherokee, IA 51012

Payment Terms:

- 45% down payment of contract value to be invoiced upon receipt of PO, due Net 10 days from date of invoice (DOI).
- 45% of the contract value to be invoiced upon written notification of readiness to ship, but no later than 30 days after notification of readiness to ship should the customer delay shipment, due Net 30 days from DOI.
- 10% of the contract value to be invoiced after commissioning but no later than 90 days after notification of readiness to ship, due Net 30 days from DOI.

Material Escalation Clause:

GEA reserves the right to adjust the sales price at any time prior to the acceptance of Customer's order for any fluctuation in material cost or surcharge whether due to tariff, tax, or other supplier material price changes. GEA reserves the right to adjust the sales price at any time prior to completion of the order for any fluctuation in material cost or surcharge due to tariff changes. The adjustment in the price will only be based on the direct cost of the material to be purchased to produce the equipment.

Payment Remittance Information:

WIRING INFORMATION

Bank Name: Deutsche Bank

Bank Account #00476746

Transit #021001033

Checks should be sent to:

GEA Food Solutions North

America, Inc.

P.O. Box 5155

Carol Stream, IL 60197-5155

OVERNIGHT/COURIER DELIVERIES

FIS Lockbox Processing

270 Remington Blvd, Suite B

Bolingbrook, IL 60440

Ref: Lockbox #5155

Ph: 630-300-7204

ROUTING NUMBER FOR ACH IS #021001033

Please note: GEA does not accept credit card payments.

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Purchase Money Security Interest

[.].1 **Grant of Security Interest.** As security for Customer's responsibilities under the contract, Customer hereby grants GEA a continuing first-priority, purchase-money security interest (hereinafter referred to as the "PMSI") in the Collateral. For purposes of the PMSI, the "Collateral" means collectively: (a) each of the goods, all repairs thereto and all replacements and substitutions therefor furnished by GEA; (b) all additions, attachments and accessories to or for any or all items of the goods (including without limitation all fittings and fixtures used in connection therewith); and (c) all proceeds (including without limitation insurance proceeds), accounts, accounts receivable, payment intangibles, instruments, documents, chattel paper, general intangibles and other rights arising from the sale, lease, assignment or transfer by Customer of any or all of the goods. The PMSI shall be and remain a purchase-money security interest.

[.].2 **Financing Statements.** Customer, to evidence, perfect and maintain the PMSI, hereby authorizes GEA to prepare and file in each appropriate jurisdiction, at the Customer's expense (if GEA wishes to charge the Customer therefor), one or more UCC-1 financing statements (or the then-current form of such statement(s) or documents to achieve the same or similar results), including without limitation each continuation or amendment thereto as GEA deems necessary or desirable.

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INSTALLATION TERMS

Supervision of Installation and Commissioning

CookStar (Phase 1) - GEA Food Solutions will provide two (2) technicians at the customer's plant for seven (7) business days, travel time included (Monday through Friday 8:00 a.m. to 5:00 p.m., excluding weekends and holidays). This is part of the original purchase and includes start-up and training.

CookStar (Phase 2) - GEA Food Solutions will provide one (1) technician at the customer's plant for five (5) business days, travel time included (Monday through Friday 8:00 a.m. to 5:00 p.m., excluding weekends and holidays). This is part of the original purchase and includes start-up and training.

Additional support and training time is available at a cost of \$1,280 for the first eight (8) hours and \$210 for each additional hour thereafter. Weekend or holiday technical support will be provided at a cost of \$1,560 for the first (8) hours, and \$210 for each additional hour thereafter. Airfare is billed at cost. Lodging, auto, and meal expenses will be billed at a flat rate of \$250/day.

Project Management

GEA Food Solutions will assign a Project Manager to the project that, for the duration of project, will be a single point of contact for customer. The project manager will be responsible for the successful execution of the project from GEA Food Solutions' side. This includes the coordination of: 1) equipment delivery, 2) utility requirements, 3) technical clarifications, 4) installation, commissioning and training, and 5) final punchlist resolution. It is highly recommended that customer reciprocate by assigning a project manager who will be responsible for the successful execution of the project from the customer's side.

Equipment Hand-Over Process

Commencing with the successful installation and commissioning of the equipment herein described, a **Hand-Over Certificate** will be generated by GEA Food Solutions and signed by both parties prior to the start of production. Should any technical issues with the equipment remain open at the time of the hand-over, all such issues will be documented on a punch-list within the Hand-Over Certificate along with target completion dates.

In case installation is not included as part of GEA Food Solutions' scope of supply, the hand-over date will be the Ex Works delivery date.

Please Note: The equipment cannot be taken into full production prior to signing the Hand-Over Certificate. The warranty period will commence from the date of hand-over of the equipment in accordance with the Terms & Conditions set forth in this document.

Statement of additional delay cost assignment:

GEA Food Solutions will make every effort for on time completion of the installation of GEA Food Solutions equipment; GEA Food Solutions is prepared for minor and normal construction / installation delays. If there are prolonged delays, whether foreseen or unforeseen which are due to factors beyond GEA Food Solutions control, GEA Food Solutions may opt for temporary removal of the GEA Food Solutions installation team from the installation site, and the customer will be held accountable

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for all costs related to such temporary removal such as all transportation charges, temporary storage charges, lost work, and travel hours.

Storage of Equipment:

The customer is responsible for the cost of storing equipment due to delays in the original project schedule caused by the customer, including but not limited to the site not being ready to receive the equipment, lack of utilities, ... etc. If storage is required for the equipment, the customer must provide suitable storage, which is safe and dry. Storage temperatures should remain between 45 and 90 degrees Fahrenheit and relative humidity should be less than 50%. The customer is responsible for any damages and/or deterioration to the equipment during storage and any associated transfer of the equipment.

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**GEA FOOD SOLUTIONS / CUSTOMER RESPONSIBILITY LIST
(As Applicable)**

	Customer	GEA
Safety		
Conduct on-site plant safety orientation prior to start of installation	X	
Provide HACCP rules and regulations that must be followed	X	
Project Management		
Provide final equipment drawings and layouts		X
Provide project schedule	X	X
Provide contact list for individuals involved in project	X	X
Approval of all change orders	X	X
Permits as required for installation	X	
Building / Site		
Any building related work including structural supports for equipment and plant floor preparation. Building/floor must be structurally adequate to handle the loads of the equipment.	X	
Utilities. Provide all utilities required to operate the equipment, including all piping and connections to the equipment. Utilities include but are not limited to air, electrical, water, steam, gas, CO2, etc. Customer to provide conduit and wireways for electrical wiring including control wiring. Customer to pull wiring through the building to and from any remote control panels to the equipment. (Please refer to the utility spec sheet for equipment specific information).	X	
Utilities required for equipment installation (air*, water, electrical, mechanical) *Air must be filtered and dry in order for equipment to function properly.	X	
Mechanical systems (cooling, heat, ventilation, make-up air, etc.) as required keeping the equipment operating at peak efficiency.	X	
Safe and secure work area free of debris and other job related hazards. Jobsite must comply with all OSHA regulations.	X	
Provide safe secure place to store gang box and misc. tools required for the installation of the equipment.	X	
Provide washroom / restroom access	X	
Any local and national permits required to install and operate the equipment	X	
Installation		
Transportation of equipment to customer site		X
Rigging. Provide cranes, rigging equipment and manpower to safely offload equipment from trucks and place into final location in building. Note: GEA will not be responsible for any damage to the equipment as a result of improper material handling and rigging.	X	
Uncrating of equipment	X	
Removal of crating material	X	
Transportation of equipment into building and placing in final location.	X	
Leveling of equipment	X	
Assembly of equipment	X	
Tools required to install the equipment	X	
Provide start-up & commissioning	X	X
Provide (2) sets of documentations.		X
Provide onsite training as stated in quote. Note: Customer must make personnel available for uninterrupted training.	X	X
Final walkthrough and acceptance of equipment	X	X
Removal and disposal of packaging material, crating and trash.	X	
Packaging Material		
Provide adequate rollstock films at our GEA Wallau Germany facility to enable GEA to perform an adequate pre-delivery inspection of the equipment in conjunction with the packaging material.	X	

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TERMS AND CONDITIONS – EQUIPMENT

Definitions

Term	Meaning
Acceptance Certificate	a certificate that is issued when the Scope of Supply (or section thereof, if applicable) is deemed to have passed the Acceptance Tests according to these Terms.
Acceptance Tests	tests (if any) for the acceptance of the Scope of Supply, as stipulated in the Contract.
Base Date	the date of Seller's Offer.
Buyer	the party who contracts to buy the Scope of Supply.
Buyer Scope	all works relevant to the Scope of Supply which are not expressly included in the Scope of Supply, including any works specified in these Terms or Seller's Offer as being the responsibility of Buyer.
Change Order	a written document signed by a representative of Buyer and Seller implementing a Change Request.
Change Request	a request for a change in the Scope of Supply, including Seller's means or methods of executing the Scope of Supply.
Changed Law	changes in or enactments of directives, laws, rules, regulations, codes or standards or new or different interpretations thereof.
Contract	the contract formed between Buyer and Seller for purchase and sale of the Scope of Supply.
Contract Price	the price set out in Seller's Offer or, in case of binding contract, in the Contract.
Costs	all costs and expenses incurred or to be incurred by Seller, including overhead, insurance, financing costs and similar charges and a reasonable profit; when calculating Costs, the costs of Seller's personnel shall be based on Seller's periodic rates as set forth in Seller's Offer or, if not contained therein, according to its rates prevailing when the work is performed.
day	a calendar day.
Defect	a flaw in the workmanship or materials of the Goods at the time of delivery or a failure to prepare documentation or provide Site Services according to commercially reasonable skill and care.
Export Control Event	a situation where the Export Control Regulations may require an Export License or may cause additional costs, delay, prohibit Seller's performance and/or render the Contract not reasonable to perform.
Export Control Regulations	all applicable national and international laws, regulations, orders, embargoes, administrative practices or resolutions that may prohibit or restrict the trade of the Goods.
Export License	license or an equivalent formal approval by the competent authorities for the supply of the Goods under this Contract which is required to be obtained by Seller under the Export Control Regulations.
Force Majeure	acts of war or terrorism, riots, civil commotion, embargoes, export/import permit delays or refusals, epidemics, strikes, fires, delays in transport or customs clearance, earthquakes, floods, hurricanes, typhoons, storms, other acts of God or government or any other circumstances beyond the reasonable control of a party.
Goods	the plant, equipment, parts and materials to be delivered by or on behalf of Seller, as expressly listed in Seller's Offer or, in case of binding contract, the Contract.
including	including without limitation.
Incoterm	the series of pre-defined commercial terms published under the name Incoterm® by the International Chamber of Commerce (Paris) as in force at the Base Date.
Process Warranties	the warranties given by Seller in the Contract that the Goods will meet certain requirements in respect of process, performance or functionality; provided that each such warranty is expressly set out and labelled "Process" or "Performance" warranty in Seller's Offer or, in case of binding contract, the Contract.
Schedule	the time schedule for the Scope of Supply as set out in Seller's Offer or, in case of binding contract, in the Contract, as such schedule may be modified according to Clause 6 of these Terms.
Seller	The GEA entity identified in Seller's Offer or, in case of binding contract, the Contract.
Seller's Offer	Seller's quotation, proposal or offer for the Scope of Supply.
Scope of Supply	the Goods, documentation and services (including Site Services, if any) expressly listed as Seller's responsibility in Seller's Offer or, in case of binding contract, the Contract.
Site	the place at which the Goods are to be installed.
Site Services	the services provided by Seller at the Site expressly listed as Seller's responsibility in Seller's Offer or, in case of binding contract, the Contract.
Testing Protocol	has the meaning set forth in paragraph 2 of Annex A.
Terms	these Terms and Conditions – Equipment, including Annexes A, B (where applicable), and C.
Warranty Conditions	has the meaning set out in Clause 8.1.5.
Warranty Period	twelve (12) months from Buyer's first commercial use of the Goods, but not more than eighteen (18) months from delivery (or notice of readiness to ship if Buyer delays delivery).

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General Provisions

These Terms shall apply to and form an integral part of any Seller's Offer and any Contract.

Any provision of Buyer's purchase order, offer, acceptance or other document or requirement of Buyer which forms a part of the Contract and is in conflict or inconsistent with these Terms or which imposes on Seller liabilities that are additional to or different from those set forth in the Terms shall not apply to the Contract and is of no force or effect. Buyer's terms of purchase, if any, shall not apply to the Contract and are of no force or effect.

These Terms shall prevail over any inconsistent or conflicting provision of the Contract (including Seller's Offer), except only where (i) Seller has by way of Seller's Offer or a duly signed document expressly amended a provision of these Terms and has referenced the specific provision of these Terms being amended or (ii) these Terms expressly provide for an option to deviate from the respective provision in Seller's Offer or, as the case may be, in the Contract.

1. **Scope of Supply:**

- 1.1 Seller's works shall be limited to the Scope of Supply. Buyer shall be responsible for the Buyer Scope.
- 1.2 Where the Scope of Supply is required to interface with other equipment of Buyer or Buyer's other contractors, Buyer shall be responsible for such interface, including its dimensions and compatibility.

2. **Change Orders / Contract Execution / Documents:**

- 2.1 Buyer may propose Change Requests. In case of a Change Request, Seller will notify Buyer of how the proposed Change Request can be carried out and which modifications to the Contract (including contract price, schedules, etc.) are required. If Buyer wishes to proceed with a proposed Change Request, the Parties will agree to a Change Order. Seller shall have no obligation to carry out any Change Request until a written Change Order has been signed by both parties; however, if Buyer requests that Seller proceeds with the Change Request (without a written Change Order) and Seller does so, Seller shall be entitled to reimbursement of its resulting Costs and to an extension of time for any resulting delay. Seller may request Change Requests to be executed at its expense; such Change Requests will be granted by Buyer absent material reasons.
- 2.2 Pre-delivery inspections and tests, if any, shall be stipulated in and limited to those set out in the Contract. Any pre-delivery inspections and/or tests not provided for in the Contract shall be subject to the change order procedure in Clause 2.1. If not stated otherwise, such pre-delivery inspections and tests shall be performed in accordance with Seller's standard inspection procedures.
- 2.3 Where Seller issues documents for approval, these must be approved (with comments, if any) and returned to Seller without undue delay but in any event no later than 7 days after their respective submittal; otherwise such documents will be deemed approved. Buyer may refrain from giving its approval only if and to the extent it can show that the document in question is contrary to the requirements of the Contract.
- 2.4 Seller reserves the right to substitute items of the Scope of Supply provided that any such substitution shall be with an item of equal or better standard. Seller may execute the Contract pursuant to its own plans, procedures, and working methods, except to the extent they conflict with any express provision of the Contract.
- 2.5 Buyer shall ensure that each delivery and other activity of the Buyer Scope is commenced, performed and completed in a timely and sufficient manner so Seller is able to commence, perform and complete its Scope of Supply (including Site Services) in accordance with the Schedule and without delay, disruption, hindrance or obstruction of any kind.
- 2.6 Seller reserves the right to adjust the Contract Price for any escalation in the cost of materials or any surcharge (a) due to tax, tariff, or other price change in material supply that occurs prior to the formation of the Contract, or (b) due solely to tariff changes, that occur after formation of the Contract, but prior to completion of the Scope of Work ((a) and (b) each a "Contract Price Adjustment"). Any Contract Price Adjustment shall be based solely on an escalation of Seller's direct cost for (x) material purchased to produce the Scope of Work, or (y) equipment supplied by a subsupplier, whichever is applicable.

3. **Site Services:**

- 3.1 If Site Services are included in the Scope of Supply, Buyer shall ensure that Seller has safe and appropriate access to the Site at all times required by Seller. Any failure by Buyer to perform this obligation and any failure as regards readiness of the civil works or equipment outside the Scope of Supply at the Site will entitle Seller to suspend its Site Services.
- 3.2 In case the Scope of Supply is to be installed by Seller or under its supervision within any building or other civil works not provided by Seller, the civil works (including the ceilings, walls, floors and related penetrations) shall be ready by such time and in such condition as may be required by the Contract and/or Seller in writing. Any failure by Buyer to perform this obligation will entitle Seller to suspend its Site Services.

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3.3 For the purpose of Seller carrying out the Site Services, Buyer shall be responsible for providing all of the following: (i) civil works; (ii) feed and other raw materials for making product; consumables and utilities, each in strict conformity with all requirements of the Contract; (iii) communications connections; (iv) trained and qualified laborers, operators and other personnel required by Seller; (v) safe and reliable equipment to assist in the transport of the Goods at the Site, including cranes and other lifting and transport equipment (to be operated and maintained by Buyer's personnel); (vi) a secure lock-up dry room for keeping tools and small machine parts; (vii) security; (viii) sufficient lighting; (ix) heating or cooling of the buildings at the Site to ensure reasonable climate and required ambient conditions for performing Site Services; (x) office space and facilities and welfare, messing, changing and washing facilities; (xi) any drawings or information which Seller may require for the purposes of carrying out the Site Services; (xii) special tools required for commissioning of the Goods; and (xiii) analyses of feed, utilities and product according to Seller's requirements.

3.4 Under no circumstances will Seller be responsible for the acts and/or omissions of any other contractor or person provided or made available by Buyer or for works or any equipment supplied by them, either by way of a deemed employer or otherwise, or for their payment, welfare, provision of safety equipment or safe means of working, or for their work, productivity or workmanship. Buyer shall be solely responsible for any failure of such persons or contractors to strictly comply with the instructions and requirements of Seller. Buyer shall indemnify, defend and hold Seller harmless from any resulting claims and liability for loss or damage to any property or for bodily injury or death in any way arising out of the acts or omissions of any such persons and contractors, save in each case to the extent directly caused by the negligence of Seller.

4. Payment:

4.1 Buyer shall pay Seller the Contract Price pursuant to the milestone schedule set forth in Seller's Offer or the Contract.

4.2 All payments are to be made by electronic transfer, net cash without any deduction, in United States Dollars unless a different currency is stated in Seller's Offer and within 30 days of the date of Seller's applicable invoice.

4.3 Payment shall not be deemed effected until irrevocably available funds have been received in full by Seller in its nominated bank account.

4.4 Buyer shall notify Seller in writing of any objection to the validity of any invoice within 5 days of receipt, absent which the invoice shall be deemed valid and payable.

4.5 Buyer shall have no right of set-off or right to make any form of withholding or retention against any payment of the Contract Price.

4.6 Seller shall have no obligation to commence any Scope of Supply until the first installment of the Contract Price has been received by Seller according to Clause 4.3.

4.7 If any payment is not received by the applicable date for payment, Seller shall be entitled to interest thereon at 2.5% per month and pro rata for any part thereof, without formal demand being made. In addition and upon 7 days' written notice to that effect, Seller may suspend all or part of its performance under the Contract until the payment and any due interest is received in full.

4.8 In the event of any delay in the commencement of the Scope of Supply for reasons attributable in whole or in part to Buyer and/or any suspension by Seller pursuant to Clause 4.7 or other provision of these Terms, Clause 6.6 shall apply. If any payment has still not been received in full by Seller 21 days after the applicable due date, then, irrespective of whether or not Seller has commenced any portion of the Scope of Supply and/or suspended its works, Seller shall be entitled by written notice with immediate effect to terminate the Contract pursuant to Clause 10.3.

4.9 Where the achievement by Seller of a certain milestone or activity that is necessary for Seller to become entitled to all or a portion of the Contract Price is delayed by Buyer or third persons for whom Buyer is responsible, then without prejudice to any other right or remedy which Seller may have, Seller shall for payment entitlement purposes be deemed to have achieved the milestone or activity by latest 14 days after the date on which it would have been achieved had there been no delay.

4.10 The due date for payment of sums payable to Seller under the Contract other than the Contract Price shall be 30 days after receipt by Buyer of the applicable Seller's invoice and the foregoing provisions of this Clause 4 shall equally apply to such sums.

5. Taxes:

5.1 The Contract Price and any other amounts to be paid to Seller are exclusive of, and Buyer shall be responsible for, all federal, state, local, or municipal duties, taxes (including value added, sales, use, business, excise, gross receipts, contractor's, withholding, or similar taxes), assessments or charges of any kind, except to the extent any taxes or other charges that are assessed on the profits of Seller or which under the applicable Incoterm relating to delivery of the Scope of Supply are payable by Seller. The payment of all such duties, taxes, assessments, or charges are the responsibility of Buyer. Seller must receive appropriate tax exemption certificates from Buyer; otherwise, applicable taxes will be charged by Seller on each invoice.

5.2 If any duties, taxes, assessments or charges are imposed on Seller by authorities in the country where the Scope of Supply will be installed in connection with any Site Services and/or in connection with the Contract itself, Buyer shall reimburse Seller all such amounts.

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- 5.3 Where Buyer is obliged by applicable law to make a deduction from any payment due to Seller in relation to any such duties, taxes, assessments or charges, Buyer shall increase the payment to be made such that the net payment received by Seller is without any such deduction.
- 6. Delivery / Risk of Loss / Delays:**
- 6.1 Seller shall deliver the Goods according to the applicable Incoterms by the date specified in the Schedule. If no Incoterm is stipulated, delivery shall be Ex Works manufacturer plant as specified by Seller. If no manufacturer plant is specified, then delivery shall be Ex Works Seller's premises. In case the respective stipulated Incoterm obliges Seller to perform any import formalities for the import into the country of delivery, Buyer at its cost is obliged to support Seller in any way reasonably required by Seller. Any delay (other than a delay by Seller) in completion of import formalities shall be an event entitling Seller to an extension of time and compensation of Costs according to Clause 6.6.
- 6.2 Transfer of risk of loss and damage to the Scope of Supply shall be in accordance with the stipulated Incoterm applicable at the date of Seller's Offer. The inclusion of any Site Services within Seller's Scope of Supply shall not alter this transfer of risk of loss and damage and shall not create any assumption by Seller of any form of care, custody and control over any Buyer Scope and/or the Site.
- 6.3 Statements of packing, measurements and gross weight are an approximate guide and not binding on Seller.
- 6.4 Seller may deliver the Scope of Supply from multiple locations, including different countries and may use different types of transport. Partial deliveries and trans-shipments are allowed.
- 6.5 Upon delivery or the provision of any Scope of Supply, Buyer will inspect the relevant Scope of Supply and promptly (but in no event more than 7 days) inform Seller in writing of any Defect under Clause 8.1.1. Seller will thereupon remedy any such omission or Defect. If Buyer fails to accept any Scope of Supply when tendered at the point of delivery, Seller may deliver the same to a bonded warehouse, at Buyer's cost and risk, including insurance and storage costs, and shall be deemed to have fulfilled its delivery obligations under the Contract and be entitled to payment of any amounts contingent upon delivery. Except where an Acceptance Test is stipulated and governed by Clause 8.1 or 8.2 and where Buyer has given written notice pursuant to the first sentence of this Clause 6.5, the Goods and documents included in the Scope of Supply shall be deemed accepted for all purposes at their respective delivery and Site Services shall be deemed accepted for all purposes at their respective completion, provided such acceptance shall not be with prejudice to Buyer's warranty entitlements under Clause 8.1 or Clause 8.2.
- 6.6 In case of (i) any variation pursuant to Clause 2.1; (ii) any suspension; (iii) exceptionally adverse climatic conditions; (iv) unforeseeable shortages in the availability of personnel or goods attributable in whole or in part to Force Majeure; (v) any delay, disruption, impediment or prevention of Seller or any breach of contract caused by or attributable in whole or in part to Buyer (including third parties for whom it is responsible), or (vi) any other event or circumstance for which these Terms or the Contract gives Seller an entitlement under this Clause, Seller shall be entitled to payment by Buyer of its additional Costs and to an extension of time for any delay incurred. Seller shall give written notice to Buyer of any event giving it an entitlement under this Clause within a reasonable time after becoming aware of the event.
- 6.7 If Seller is more than 2 weeks late in delivering the Scope of Supply according to the applicable Incoterms for reasons attributable to the fault of Seller (and not for any reasons attributable in whole or in part to Buyer), Buyer shall be entitled to liquidated damages (and not a penalty) in an amount equal to 0.5% of the portion of the Contract Price attributable to the value of the delayed portion of the Scope of Supply for each full week of delay up to an overall aggregate maximum delay liquidated damages of 2.5% of the Contract Price. Such liquidated damages shall not be due where Seller has failed to deliver only minor portions of the Scope of Supply that do not delay implementation of the Scope of Supply or where Buyer has not incurred any resulting loss or damage. Payment of the liquidated damages shall constitute full and complete satisfaction of any claim of Buyer, and Buyer's sole and exclusive remedy, against Seller for delayed performance by Seller or claims that Seller delayed or disrupted the work of Buyer or others. Any and all other claims for delay or late performance, including any delay in meeting any intermediate or other dates or milestones, shall be excluded.
- 6.8 Each party shall be released from the performance of its obligations under the Contract to the extent such performance is delayed, disrupted, hindered or obstructed by Force Majeure. A party shall give written notice of the occurrence of any Force Majeure within 14 days of becoming aware of its occurrence. In case such Force Majeure delays should exceed 3 months in the aggregate, each party shall be entitled, to terminate the Contract by notice with immediate effect. In case of such termination, Seller shall be entitled to all payments then due but unpaid on the date of termination and to all costs and expenses incurred in respect of the following (i) performing the Contract to date; (ii) ceasing its obligations under the Contract; (iii) in contemplation of carrying out all of its obligations under the Contract; (iv) demobilization; and (v) cancelling any related subcontract (including reasonable cancellation fees), and in each case to the extent not covered by the Contract Price as paid to Seller on the date of termination. Save for the obligations under Clause 9, neither party shall have upon termination of the Contract any other or further liability or obligation to the other party under or arising out of the Contract to the maximum extent permitted by applicable law.

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7. **Ownership:**

7.1 Title in the Goods will transfer to Buyer upon delivery. Until payment of the Contract Price is received in full, the Goods shall not be sold, pledged or otherwise encumbered or (unless otherwise specified in the payment terms) used for commercial production without Seller's prior written consent. By accepting delivery of the Goods, Buyer grants to Seller a security interest in such Goods to secure the full and prompt payment of the Contract Price. In the event of default in payment, Seller has all rights of repossession and other rights available to a secured party under the Uniform Commercial Code or other applicable law. Buyer agrees that no part of the Goods is considered a fixture or a part of any realty by reason of its being attached to real estate, and any Goods may be separated from real estate for purpose of repossession by Seller.

8. **Warranties:**

8.1 **Warranties Regarding Goods, Documentation and Site Services:**

8.1.1 Subject to the provisions of this Clause 8.1 and Clause 8.3, Seller warrants that the Scope of Supply shall be free of Defects. This warranty shall expire on the last day of the Warranty Period.

8.1.2 Seller shall be responsible for remedying any Defect under Clause 8.1.1 provided that Buyer promptly gives detailed written notice to Seller of the Defect and in any event within 7 days of discovery and before the end of the Warranty Period.

8.1.3 To the maximum extent permitted by applicable law, Seller shall have no liability for any form of Defect under Clause 8.1.1, latent or otherwise, for which it received written notification after the Warranty Period. For the avoidance of doubt, the warranty period of any Scope of Supply that has been rectified by Seller during the Warranty Period shall expire at the expiry of the Warranty Period.

8.1.4 Where Seller is responsible for a Defect, Seller shall investigate and rectify the same as soon as reasonably practicable (taking into consideration the nature of the Defect, lead-time for replacement parts, etc.). Rectification of a Defect relating to Goods included in the Scope of Supply shall be by way of repair or replacement, at Seller's option, of the relevant part of the Goods that is defective. Rectification of a Defect relating to services (including Site Services) and documentation included in the Scope of Supply shall be by way of re-performance by Seller of the relevant part of the service or documentation that is defective. Buyer shall in each case give Seller all necessary and safe access to and possession of the Site. Where Seller fails to carry out its obligations within a reasonable time, Buyer shall be entitled, upon giving not less than 7 days' prior written notice to that effect, to have the Defect in question rectified by a third party at the cost of Seller, to the extent Seller would have been responsible for such cost under Clause 8.1, Buyer has reasonably mitigated its costs, and Seller has not commenced rectification within the noticed period and diligently pursued rectification thereafter. Seller shall have no responsibility for any such works performed by a third party. Any replacement parts shall be delivered according to the same delivery (Incoterms) terms as specified in the Contract. Buyer shall be responsible for all labor, equipment, costs used or incurred in the disassembly, removal, transport, installation and commissioning of repaired or replaced defective parts. Seller shall not be deemed to have breached any of its warranty obligations where it has rectified a Defect according to this Clause.

8.1.5 Seller's responsibility for any Defect is subject to the condition that it is not caused by one or more of the following: (i) normal wear and tear of parts; (ii) use of non-original spare parts; (iii) use of feed, inputs, consumables or utilities not in strict conformity with the specifications stated in the Contract or in Seller's written manuals; (iv) any failure of upstream and/or downstream equipment; (v) modifications without Seller's express prior written consent; (vi) use of corrosive or abrasive substances; (vii) the storage, handling, use, operation or maintenance of any Goods which is not in strict conformity with good engineering practice, the Contract or any written requirements of Seller, including any failure to comply with Seller's written manuals and instructions and Buyer's own quality assurance requirements; (viii) information, services, personnel, equipment or other items supplied by or for Buyer; (ix) failure to permit Seller to perform Acceptance Tests, supervision of installation and/or installation; (x) improper installation; (xi) chemical reversion or reaction to Buyer's product; (xii) Buyer failing to provide suitable premises in which the Goods are to be located; and/or (xiii) other conditions or circumstances not due to the fault of Seller (collectively, "Warranty Conditions").

8.1.6 If the Contract provides for Acceptance Tests for purposes other than those stipulated in Clause 8.2, such tests shall be performed to verify whether the Goods are free of material Defects. In such case, these Acceptance Tests will be subject to the provisions of Annex A.

8.1.7 Used Goods included in the Scope of Supply are sold as-is with no warranty, express or implied.

8.2 **Process Warranties:**

8.2.1 Subject to the provisions of this Clause 8.2, Clause 8.1, Clause 8.3 and Annex A, Seller warrants that the Goods will meet the Process Warranties (if any). This warranty expires when the Process Warranties are discharged according to paragraph 3 of Annex A.

8.2.2 Technical figures, data and other descriptions of any kind concerning or relating to the process, performance or functionality of the Scope of Supply, including its individual parts, which are not expressly and specifically labelled "Process" or "Performance" warranty shall not constitute a Process Warranty as that term is used in these Terms. Such figures, data and descriptions shall be indicative only and non-binding.

8.2.3 All Process Warranties, if any, are subject to: i) a steady and constant stream of feed, materials and utilities in strict conformity with the specifications stated in the Contract; ii) the furnishing by Buyer of trained, qualified and sufficient personnel as required by Seller

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during the Acceptance Tests; iii) Seller is given access to all operating and maintenance records and data and Buyer undertakes all analyses of product, utilities and feed as required by Seller in writing; iv) Seller performs or technically directs the performance of the Acceptance Tests; v) any Warranty Conditions to the extent not stated in the foregoing; and vi) the conditions and other provisions of Annex A.

8.3 **Disclaimer and Limitations:**

To the fullest extent permitted by applicable law, (i) SELLER HEREBY EXCLUDES AND DISCLAIMS ALL CONDITIONS, WARRANTIES, GUARANTEES AND REPRESENTATIONS THAT ARE NOT EXPRESSLY SET OUT IN CLAUSES 8.1 AND 8.2 OR WHICH ARE IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE AND WHICH, BUT FOR THIS EXCLUSION AND DISCLAIMER, WOULD OR MIGHT SUBSIST IN FAVOR OF BUYER, INCLUDING ANY WARRANTIES AS TO FITNESS FOR SPECIFIC PURPOSE OR MERCHANTABILITY; (ii) Buyer's remedies as set forth in Clause 8.1.4 above and in paragraph 5 of Annex A shall be Buyer's sole and exclusive remedies in respect of any Defect or non-conformance, including any Defect covered by Clause 8.1 or any failure to achieve any Process Warranty covered by Clause 8.2; and (iii) Seller shall not be liable for any loss or damage, including any loss or damages described in Clause 10.5 below, caused by or resulting from any breach of warranty or any defect, including any Defect covered by Clause 8.1 or any failure to achieve any Process Warranty covered by Clause 8.2. If it is ultimately determined that this remedy fails of its essential purpose, then Seller's maximum liability is limited to the Contract Price attributable to the portion of the Scope of Supply for which the exclusive remedy has failed.

9. **Confidentiality and IP:**

9.1 Buyer shall treat all information, drawings and data of any kind made available or provided by Seller in Seller's Offer or under the Contract whether orally, electronically, in writing, visually (such as through site visits, tests or audits) or otherwise and regardless of whether marked "confidential" ("Confidential Information") as private and confidential. Buyer shall not publish or disclose Confidential Information or any particulars thereof (except as may be necessary for the purposes of the Contract, including disclosure to its and its affiliates' officers, directors and employees, and/or as required by the rules of a public stock exchange or by applicable law), without the previous written consent of Seller. Buyer may use Confidential Information only for the work covered by the Contract and not for any other project. Nothing in this Clause 9 shall prevent the publication or disclosure of any Confidential Information which either has come within the public domain otherwise than by breach of this provision or was already in the possession of Buyer with a right to disclose and use such information.

9.2 Any disclosure for the purposes of the Contract shall be made against an undertaking of non-use and confidentiality from Buyer on terms at least as stringent as set out in this Clause 9. In respect of any disclosure required by a stock exchange or by applicable law, Buyer shall disclose only that portion of the Confidential Information it is legally required to disclose and to exercise all reasonable efforts to obtain confidential treatment for such Confidential Information.

9.3 Intellectual property or patent rights which may be obtained on the basis of the information given or made available to Buyer in Seller's Offer or under the Contract or with respect to Seller's Goods, including, without limitation, any discovery, invention, improvement or enhancement to Seller's Goods or the process, operating parameters, or controls associated with such Goods will remain the exclusive property of Seller or its subcontractors and/or sub-suppliers, respectively. Buyer shall not, nor shall Buyer permit any third party to, reverse engineer or otherwise technically examine, measure or test Seller's Goods (except for the purposes of maintaining and operating the Goods) without Seller's prior written consent.

9.4 Subject to payment in full by Buyer of the Contract Price, Buyer shall have a non-exclusive, non-transferable and royalty free license to use the intellectual property rights in the Scope of Supply and any Confidential Information provided by Seller for the sole purpose of operating and maintaining the Goods provided under the Contract and strictly for the application and use set out in the Contract, subject at all times to subsisting third party rights and the obligation of confidentiality. Buyer may transfer the intellectual property rights in the Scope of Supply only together with the title in the Scope of Supply.

9.5 Seller will defend and indemnify Buyer and hold Buyer harmless from and against any liability arising out of any claim that the method of manufacture or design of the Goods infringes any United States utility patent apparatus claim. The foregoing indemnity for any infringement claims does not apply to the extent that any such claims result from: (i) the interconnection, combination or use of the Goods with equipment, services, systems or software not supplied by Seller; (ii) specifications, including designs and instructions, prepared by Buyer or third parties on its behalf; (iii) modification of the Scope of Supply without Seller's prior written consent; (iv) any process, method, product or by product process patent claim; (v) the use of the Scope of Supply as part of a Buyer process, including any product thereby produced or processed; (vi) any patent issued outside the country where Seller has its registered offices; or (vii) any patents owned or acquired by Buyer or by any holding company and subsidiary of Buyer. In each of the foregoing cases (i) through (vii), Buyer will defend, indemnify and hold Seller harmless for any infringement claims. In all cases of either party's indemnity provided in this paragraph, the party seeking indemnity must promptly notify the other party in writing of such claim of infringement; the defense of any legal action relating to such claim will be under the direction and control of the indemnifying party; the indemnified party shall cooperate with the indemnifying party in making such defense; and the indemnifying party will have complete control of the litigation or proceeding, including the amount of any settlement (provided the indemnified party has no monetary contribution obligation with regard to such settlement) and the choice in retention of counsel, and shall bear all expenses of such defense; provided, however, that the indemnified party may be represented in such action by its own counsel at its own expense. In the event that the Goods or any portion thereof is held to infringe the intellectual property rights of any third party such that Seller would be required to indemnify Buyer hereunder, Seller will, at its option and at its sole cost and expense: (a) procure for Buyer the right to

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continue the use of the Goods; (b) replace the Goods or any portion of the Goods with non-infringing goods of similar quality and utility; or (c) modify the Goods to the extent necessary to become non-infringing. Indemnity under this paragraph is Buyer's sole and exclusive remedy for the infringement provided for in this paragraph.

10. Remedies and Limitations of Liability:

10.1 Reasons for Termination:

10.1.1 A party may terminate the Contract by giving written notice thereof to the other party if: (i) a provision of these Terms gives the party an express entitlement to terminate the Contract, (ii) the other party fails to perform any material obligation under the Contract and has not commenced a cure of the failure within 30 days of receipt of written notice of such failure from the non-defaulting party and does not diligently pursue the cure thereafter, (iii) the other party becomes the subject of liquidation, bankruptcy or other insolvency proceedings, has a receiver appointed over any of its assets or undertakings, makes any arrangement or composition with its creditors, (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or is the subject of any similar arrangement, event or proceedings. Notwithstanding the foregoing, where Seller's default is based on a failure of the Scope of Supply to meet a material requirement of the Contract, the time period to which Seller must complete the cure will be agreed to by the parties based on the reasonable time required for material re-supply, re-fabrication and/or re-manufacture of any replacement of, or any repair or modification to the Scope of Supply and Buyer must permit Seller to have reasonable access and opportunity to investigate and cure any alleged default with a minimum of 3 opportunities to complete the cure before taking any action to terminate the Contract.

10.2 Termination by Buyer:

10.2.1 Where Buyer has a right to terminate the Contract pursuant to Clause 10.1.1 and Buyer has terminated the Contract by giving timely written notice thereof, the liability of Seller to Buyer upon such termination shall be to pay either the reasonable additional costs in excess of the Contract Price that are required to complete the Scope of Supply or the difference between the fair market value of the Scope of Supply as delivered and the Contract Price paid at the time of termination, whichever is less. To the maximum extent permitted by applicable law, such rights of Buyer upon termination shall be to the exclusion of any other remedies that may be available to Buyer in case of termination or rescission / withdrawal.

10.2.2 Seller shall have no liability for any other cost and expense, loss or damages howsoever incurred by Buyer and, save for the obligations under Clause 9 and Clause 10.2.1 above, neither party shall have any further liability or obligation to the other party under or arising out of the Contract, to the maximum extent permitted by applicable law.

10.2.3 In case expressly stated in Seller's Offer or the Contract that Buyer may be entitled to terminate the Contract for convenience or in case Buyer may be entitled to such right under the applicable statutory law and where Buyer exercises such right Seller shall be entitled to payment of the Contract Price equivalent to the portion of the Scope of Supply completed together with reimbursements for Costs arising from Buyer's termination.

10.3 Termination by Seller:

Where Seller has a right to terminate the Contract pursuant to Clause 10.1 and Seller terminates the Contract by giving timely written notice thereof, Seller shall be entitled to compensation as if the Contract had been terminated due to an event of Force Majeure according to Clause 6.8 above save that Seller shall also be entitled to payment in full of the profit that Seller expected under the Contract.

10.4 Exclusive Remedies:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BUYER'S RIGHTS AND REMEDIES AS EXPRESSLY STATED IN THE CONTRACT (WHETHER BY WAY OF DAMAGES, PAYMENT OR REIMBURSEMENT OF COSTS, LIQUIDATED DAMAGES, PRICE REDUCTION, MAKE GOOD OR REMEDIATION, TERMINATION OR OTHERWISE) SHALL BE ITS SOLE AND EXCLUSIVE RIGHTS AND REMEDIES REGARDLESS OF THE EVENTS, CIRCUMSTANCES OR THEORY ON WHICH A CLAIM MAY BE BASED (INCLUDING TERMINATION, BREACH OF CONTRACT OR STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, INDEMNITY, RESCISSION / WITHDRAWAL OR OTHERWISE).

10.5 Exclusion of Certain Damages:

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY EXCLUSIVE OR LIMITED REMEDY, EXCEPT ONLY (i) TO THE EXTENT OF ANY LIQUIDATED DAMAGES PROVIDED FOR IN THE CONTRACT AND (ii) TO THE EXTENT THE EXCLUSION OF SELLER'S LIABILITY IS PROHIBITED BY APPLICABLE LAW (IN WHICH CIRCUMSTANCES SELLER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW); SELLER SHALL IN NO CASE WHATSOEVER, INCLUDING BY WAY OF BREACH OF CONTRACT (INCLUDING TERMINATION) OR OF STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, INDEMNITY, CONTRACT PRICE REDUCTION OR REPAYMENT, TERMINATION, RESCISSION/WITHDRAWAL, MAKE GOOD OR REMEDIATION OR OTHERWISE, BE LIABLE FOR ANY (A) LOSS OF REVENUES OR PROFITS; LOSS OF OPPORTUNITY, PRODUCTION OR CONTRACTS; LOSS OF USE; STANDBY COSTS; LOSS OF OR DAMAGE TO FEED, RAW MATERIALS, UTILITIES OR PRODUCT; PLANT DOWNTIME OR

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DELAYS; LOSS OF GOODWILL; LIQUIDATED DAMAGES OR PENALTIES IMPOSED ON BUYER BY ITS CUSTOMERS OR THIRD PARTIES; BUYER'S CONTRACTUAL LIABILITY TOWARDS ANY THIRD PARTY; COSTS TO RECALL BUYER'S PRODUCT; ANY DAMAGES FINES OR PENALTIES PAYABLE BY BUYER; OR OTHERWISE FOR ANY FINANCIAL OR ECONOMIC LOSSES OR DAMAGES, AND IN EACH CASE IRRESPECTIVE WHETHER THE LOSSES OR DAMAGES IN QUESTION ARE DEEMED OR CLAIMED TO BE DIRECT, CONSEQUENTIAL, INDIRECT OR OTHERWISE, OR (B) FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY, LOSSES OR DAMAGES HOWSOEVER CAUSED OR ARISING; OR (C) FOR ANY LOSS OR DAMAGE TO THE EXTENT ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF BUYER, ITS EMPLOYEES OR AGENTS OR ANY THIRD PARTY.

10.6 **Maximum Aggregate Liability:**

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY EXCLUSIVE OR LIMITED REMEDY, EXCEPT ONLY TO THE EXTENT THE EXCLUSION OR LIMITATION OF SELLER'S LIABILITY IS PROHIBITED BY APPLICABLE LAW (IN WHICH CIRCUMSTANCES SELLER'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY APPLICABLE LAW), SELLER'S MAXIMUM AGGREGATE LIABILITY TO BUYER SHALL IN NO CASE EXCEED THE CONTRACT PRICE AS RECEIVED BY SELLER, IRRESPECTIVE WHETHER SUCH LIABILITY ARISES BY WAY OF BREACH OF CONTRACT (INCLUDING TERMINATION) OR OF STATUTORY DUTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, INDEMNITY, CONTRACT PRICE REDUCTION OR REPAYMENT, TERMINATION, RESCISSION/WITHDRAWAL, MAKE GOOD OR REMEDIATION OR OTHERWISE.

10.7 The expiry of the Warranty Period shall, to the maximum extent permitted by applicable law, constitute conclusive evidence for all purposes and in all proceedings whatsoever between the parties that Seller has completed its obligations under or arising out of the Contract and performed the Scope of Supply and made good all Defects therein in accordance with its obligations under the Contract. After the expiry of the Warranty Period, all claims of any nature whatsoever Buyer may have against Seller, whether known or not, under or arising out of the Contract and the use of the Scope of Supply, and any right, cause of action and or remedy shall be deemed to be barred and extinguished. Provided always that this Clause 10.7 shall not apply in case of fraud or to the extent any proceedings were commenced and served in writing on Seller within the Warranty Period.

10.8 TO THE EXTENT THAT BUYER MAKES ANY CLAIM UNDER ANY FRAUD OR TORT THEORY FOR THE PURPOSE OF CIRCUMVENTING THE LIMITATIONS AND DISCLAIMERS SET FORTH ABOVE AND IS UNSUCCESSFUL IN PREVAILING ON THOSE CLAIMS, BUYER HEREBY AGREES TO REIMBURSE AND INDEMNIFY SELLER FOR ALL ATTORNEYS' FEES AND EXPENSES AND COSTS INCURRED BY SELLER IN DEFENDING THOSE CLAIMS.

11. **Directives / Changed Laws / Permits / Safety:**

11.1 The Goods shall comply with governmental directives, laws, rules, regulations, codes and standards, if any, that are expressly stated in Seller's Offer, as the same are in effect on the Base Date. If after the Base Date any Changed Law affects the Scope of Supply and/or Seller's means or manner of executing its works and which Seller is required by such Changed Law to comply with and implement, Seller shall be entitled to an equitable adjustment, including the remedies set out in Clause 6.6. Seller shall have no responsibility for compliance with any emission, discharge or other environmental requirements, except to the extent set out in any Process Warranties. Seller shall have no responsibility for any other Changed Law.

11.2 Buyer shall be responsible for (i) all permissions, consents and permits in connection with the Site; (ii) maintaining the Site in a safe working condition and as a safe place of work for all personnel at the Site at any time, providing safe means of access to the Scope of Supply at all times, conducting all activities on the Site in a safe manner and as prescribed by applicable directives, laws, rules, regulations, codes and standards and as set forth in the operating and maintenance manuals and instruction sheets furnished by Seller; (iii) not removing or modifying any safety device, guard or warning sign provided as part of the Scope of Supply. If Buyer fails to strictly observe any of the obligations in this Clause, Buyer shall indemnify, defend and hold Seller harmless from any resulting claims and liability arising out of loss or damage to any property or out of bodily injury or death, save to the extent directly caused by the negligence of Seller.

12. **Amendment to the Contract:**

12.1 No change in, addition to, or waiver of the provisions of the Contract shall be binding upon Seller or Buyer, unless contained within an identified written formal amendment to the Contract and signed by both parties.

13. **Export Control:**

13.1 Buyer acknowledges that the Goods to be provided by Seller are or may be controlled by Export Control Regulations which may result in an Export Control Event. In case of an Export Control Event, Seller shall be entitled to all additional costs and expenses which may be needed for Seller to fulfil its obligations under Seller's Offer or, in case of binding contract, the Contract, including costs and expenses needed to obtain an Export License. Buyer agrees to promptly provide to Seller all necessary information that may be requested to obtain an Export License, such as end-user certificates. Seller will promptly inform Buyer about material delay to obtain an Export License, a revoked license or any prohibition to execute the contract.

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- 13.2 If an Export License is denied or revoked or if an embargo prohibits the execution of the contract or if any other Export Control Event will hinder Seller to fulfill one or more of its contractual obligations Seller shall be excused from the performance of its obligations under Seller's Offer or, in case of binding contract, the Contract, with immediate effect. This shall, without limitation, also apply in case that Seller may be hindered to fulfill its contractual obligations due to the fact that any of Seller's suppliers or subcontractors are hindered by an Export Control Event to supply the Goods all or in part. In any case Seller shall not be liable or accountable to Buyer for any claims for delay, loss or damage in connection with an Export Control Event.
- 13.3 Subject to Clause 13.2, if Seller gives notice to Buyer that its performance of Seller's Offer or, in case of binding contract, the Contract will be hindered by Export Control Regulations and/or Export License or embargos, each party shall be entitled to terminate Seller's Offer or, in case of binding contract, the Contract, by giving one week prior written notice. In the event of such termination Seller shall be entitled to all costs and expenses for all work in progress under the contract or for which Seller is liable to pay to any supplier or subcontractor due to the termination, as well as to all losses and damages arising from or related to the termination.
- 13.4 Buyer shall implement and follow all necessary procedures to comply with Export Control Regulations related to the Goods to be provided by Seller, and guarantees not to engage in any activity which it or Seller reasonably believes could be subject to civil, criminal or administrative liability, including but not limited to the sale, lease, transfer, or sublicensing of any Goods without appropriate authorization. Buyer shall indemnify and hold harmless Seller from and against any claim, proceeding action, fine, cost, loss and damage arising from or related to the breach of this warranty.
- 14. Data Processing:**
- 14.1 Buyer agrees that Seller will collect, process and use personal data and other data disclosed by Buyer in the course of the business relation with Seller for the purpose of (1) managing and performing the Contract with Buyer (which includes the creation and processing of invoices), (2) advertising and/or offering further goods and services to Buyer and/or (3) managing the business relationship with Buyer through e.g. a customer relationship management system. Such data may include the following data categories of persons being employed or retained by Buyer *inter alia* name, title, company, function within the company, business contact details (phone- and fax-number, email-address, mail address), history of orders, history of issues (e.g. warranty claims or disputes). Within the limitation of the above described purpose, Seller can collect, process and use the above described data (i) by itself and/or through the use of affiliates or other external subcontractors and (ii) from countries within and/or outside the European Union or European Economic Area. Buyer will ensure (e.g., if necessary, through consent declaration of the data subjects or other appropriate means available under the law) that Seller can use the above described data for the above described purposes.
- 15. Miscellaneous:**
- 15.1 If any provision of the Contract is determined to be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions and the parties will substitute the invalid or unenforceable provision by a valid provision that achieves as closely as possible the same economic effect.
- 15.2 Any clause or paragraph headings or other headings appearing in the Terms are for reference only and shall not affect the construction of those clauses or paragraphs. Words importing the singular shall include the plural and vice versa where the context requires.
- 15.3 Any reference to a statute or to regulations (whether or not specifically named herein) shall, but without prejudice to Clause 11 above, include any amendment or re-enactment thereof for the time being in force and shall include all instruments, orders, plans, regulations, bye-laws, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom.
- 15.4 All communications, verbal or written, notices, documents and drawings given by one party to the other or exchanged or made available between the parties, and including in the course of any Site related activities where applicable, shall be in English in a fluent, correct and intelligible manner.
- 15.5 The Contract shall not be construed or interpreted against or to the disadvantage of either Buyer or Seller whether on the grounds that the Contract represents Buyer's or Seller's standard or customary terms and conditions of business and/or that the Contract and or any particular recital, article, clause and or annex or appendix thereof may have originated from Buyer or Seller or other similar grounds.
- 15.6 The Contract sets forth the entire agreement between Seller and Buyer with respect to the subject matter thereof and supersedes any previous agreement or arrangement between the parties. Except to the extent expressly and specifically set forth in the Contract, all oral representations, warranties, undertakings and other statements of any kind and all documents given or exchanged (including any brochures or sales material of Seller) are expressly excluded and disclaimed by Seller. Buyer acknowledges that it has not relied on and is not relying on any such representations, warranties, undertakings, statements or documents when entering into the Contract.
- 15.7 The Contract may not be assigned by either party without the other party's prior written consent, except that no consent is required for a party to assign the Contract to an affiliate as part of a corporate reorganization. This Clause 15.7 shall not require Seller to obtain any consent to subcontract any part of its obligations under the Contract. The Contract shall be binding upon and inure to the benefit of each of the parties and to their respective legal successors and assigns. Seller may assign receivables under the Contract to a

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financial entity financing Seller's performance and Seller may provide to such financial entity copies of the invoices to which those receivables relate.

15.8 No delay or omission by either party to exercise any right or power accruing upon any default will impair any such right or power or will be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

16. Disputes/Applicable Law:

16.1 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall first be submitted to a senior executive dispute resolution process and mediation prior to the institution of litigation; provided that the settlement negotiation process can be completed within the statute of limitations. Either party shall notify the other party in writing of the nature of the claim or dispute with as much detail as possible about the alleged deficient performance of the other party (the "Dispute Notice"). Within 14 days after delivery of a Dispute Notice, a senior executive (a President or Executive Vice President level) of each party shall meet in person or by telephone at a mutually acceptable time and place in an attempt to resolve the dispute. They shall negotiate in good faith attempting to reach a resolution satisfactory to both parties. If the senior executives have not resolved the matter, or agree upon a written plan of corrective action, within 45 days of delivery of a Dispute Notice, or if they fail to meet within 30 days after delivery of a Dispute Notice, either party shall initiate mediation with a mediator and mediation location acceptable to both parties. All settlement negotiations shall be confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.2 Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall exclusively be referred to and finally resolved by the competent courts in New York. The governing law of the Contract shall be the substantive laws of New York without reference to its conflicts of laws principles. The substantive laws of New York, without reference to its conflicts of laws principles, shall govern all disputes between the Parties in connection with the Scope of Supply. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

16.3 EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION BETWEEN THE PARTIES.

16.4 EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO THE RECOVERY OF ATTORNEY'S FEES EXCEPT AS SPECIFICALLY PROVIDED IN THE TERMS.

17. Insurance:

17.1 Seller shall, upon execution of the Contract and throughout the performance of its obligations hereunder, maintain in effect and shall furnish certificates of insurance upon Buyer's request evidencing the insurance coverage based on the amounts and limits as follows: (i) Comprehensive General Liability Insurance including contractual liability coverage with specific reference to liability assumed herein and including coverage for products liability and completed operations which includes coverage for bodily injury and property damage with limits of \$2,000,000 for each occurrence, and \$4,000,000 in the aggregate; (ii) Comprehensive Automobile Liability Insurance including coverage for owned, non-owned and hired vehicles with limits of \$2,000,000 for each occurrence for bodily injury and death, and property damage; and (iii) Workmen's Compensation Insurance as required by statute in the specific jurisdiction where the work is to be performed.

17.2 Buyer shall ensure that Seller and its subcontractors carrying out the Site Services (if applicable) are covered under an all-risk insurance policy applicable to the Scope of Supply and the Site. Such cover shall be primary and name Seller as an additional insured. Seller shall be entitled upon request to a copy of the policy in question. The deductible, if any, shall be at Buyer's cost.

17.3 Neither Seller nor Buyer will be liable to any insurance company (by way of subrogation or otherwise) for, and Seller and Buyer each waive and shall each cause their respective insurers to waive, any rights of subrogation or contribution with respect to, any and all claims covered by insurance. To the extent required by each party's applicable insurance policies, each party shall promptly give its insurance company written notice of the waivers contained in this paragraph and shall cause its insurance policies to be properly endorsed to effectuate the same, if necessary, to prevent the invalidation of any insurance coverage by reason of the waivers of subrogation. Each party represents that its current insurance policies allow such waiver

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ANNEX A

ACCEPTANCE TESTS AND PROCESS WARRANTIES

1. **Acceptance Tests / Conditions:** Acceptance Tests will be conducted promptly after the Goods have been commissioned and the Goods have, in the reasonable opinion of Seller, achieved stable operation. Acceptance Tests shall be conducted with such trained and qualified personnel of Buyer as are required by Seller. In addition to any other obligations it has under the Contract, Buyer shall ensure during the Acceptance Tests that (i) all feed and utilities conform strictly to the specifications of the Contract (or if no such specifications are stated, according to the Testing Protocol provided by Seller pursuant to paragraph 2 below), (ii) all analyses of the feed, utilities and product are timely provided as required by Seller, and (iii) that all upstream and downstream equipment from the Goods operates properly. Unless otherwise specified in the Contract or the Testing Protocol, the party that will be responsible for conducting the Acceptance Tests will give at least 14 days' advance written notice to the other of the period in which the Acceptance Tests shall commence. Where the Acceptance Tests are not supervised or conducted by Seller, Buyer shall allow Seller to attend and witness the Acceptance Tests and Seller shall be entitled to a copy of all related inspection reports and records.

2. **Testing Protocol:** Except to the extent detailed in the Contract, the procedures and requirements for the Acceptance Tests shall be in accordance with Seller's test procedures and requirements. These procedures and requirements, as adapted to the Scope of Supply and the Contract, shall be provided by Seller to Buyer in the form of a "Testing Protocol" latest 30 days prior to the expected start of any Acceptance Tests. The Testing Protocol will specify, among other things, any pre-conditions, any Process Warranties not previously discharged and the subject of the Acceptance Tests, length of the relevant Acceptance Tests, measurement tolerances and the procedures and methods for conducting the Acceptance Tests.

3. **Plant Acceptance:** The Process Warranties and Seller's obligations in respect of any Acceptance Tests shall be discharged in full and Buyer shall be deemed for all purposes to have accepted the Scope of Supply if any one or more of the following applies:

- 3.1 the Goods have on average performed in accordance with the Process Warranties; or
- 3.2 any part of the Goods is taken into commercial use by Buyer prior to completion of the Acceptance Tests; or
- 3.3 the Goods have not passed the Acceptance Tests for reasons attributable in whole or in part to Buyer within 1 month from completion of commissioning, 3 months from completion of installation, or 4 months from readiness of delivery of the main Goods, whichever is the earliest; or
- 3.4 Seller has paid any liquidated damages or price reduction as may be applicable to the Process Warranties under paragraph 5 below.

4. **Acceptance Certificate:** When the Scope of Supply (or section thereof, if applicable) is deemed to have passed the Acceptance Tests according to paragraph 3 above, Seller shall submit to Buyer and Buyer shall immediately sign an acceptance certificate for the Scope of Supply ("Acceptance Certificate"). The Acceptance Certificate shall state the date when the Performance Tests were deemed to have been passed.

Buyer shall not be entitled to delay or refuse to issue the Acceptance Certificate due to the existence of defects or omissions that do not adversely and materially affect the operation of the Goods; such defects and omissions shall be noted by Buyer on the Acceptance Certificate and are to be completed by Seller as soon as reasonably practical, but without in any way affecting the validity or effect of the Acceptance Certificate.

If Buyer fails to issue the Acceptance Certificate within 14 days of when Buyer is obliged to do so under this paragraph 4, Buyer shall be nonetheless deemed to have issued the Acceptance Certificate effective as of the date when the Scope of Supply is deemed to have passed the Performance Tests under paragraph 3 above without any conditions or qualifications.

Buyer may take the Scope of Supply (or relevant section) into use only after issuance of an Acceptance Certificate. On the issuance or deemed issuance of the Acceptance Certificate, Buyer shall perform all its obligations, including payment, which then become due.

5. **Failure to pass the Acceptance Tests:** If during the Acceptance Tests the Goods fail to achieve the Process Warranties, Seller shall as soon as possible investigate the reasons for such failure and inform Buyer of the results of its investigation. Buyer shall, at its cost, fully cooperate with Seller in such investigation and shall provide Seller with all access, resources, information and documentation required by Seller to determine the cause of the failure. If it is determined that the cause of such failure is due to reasons attributable to the fault of Seller (and not to any fault attributable in whole or in part to Buyer), Seller shall without delay and at its own cost undertake all reasonable actions to remedy the cause of the failure and, unless the failure was insignificant, the relevant part of the Acceptance Tests shall be repeated.

If, notwithstanding such efforts, the Goods still fail to pass one or more repeats of the relevant part of the Acceptance Tests, for reasons attributable to the fault of Seller (and not to any fault attributable in whole or in part to Buyer), Seller may, after consultation with Buyer and after at least three attempts to remedy the failure, elect either to carry out further remedial actions or to pay as liquidated damages (and not as a penalty) the applicable Process Warranty liquidated damages as may be specified in the Contract (provided that if no liquidated damages are specified, the parties shall agree on a reduction in the Contract Price; the price reduction shall reflect the difference between the fair market value of the Goods as sold and the fair market value of the Goods as delivered, installed and commissioned). The payment of liquidated damages or, as the case may be, an agreed price reduction shall be Buyer's sole and exclusive remedy for any failure of the Goods to achieve the Process Warranties and other criteria applicable to the Acceptance Tests. The amount of all payments or price reductions shall not, in any event, exceed in the aggregate 5% of the Contract Price (or in case the Scope of Supply is comprised of different sections, the portion of the Contract Price attributable to the section failing the test).

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If Seller is prevented, for more than 14 days, from carrying out an Acceptance Test or an Acceptance Test fails to pass in each case for reasons attributable in whole or in part to Buyer, the Acceptance Tests shall be deemed passed and Seller shall be entitled to payment by Buyer for its additional Seller costs.

6. **Delay in Acceptance.** If the Acceptance Tests are delayed or prolonged due to reasons not attributable in whole or in part to Seller, Seller shall be entitled to payment by Buyer for its additional Costs.

7. **Sections.** Where stipulated in the Contract or as reasonably requested by Seller, the Scope of Supply will be tested in sections, in which case the provisions of this Annex A shall apply to each section.

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GEA Food Solutions North America, Inc.
16005 Gateway Dr. Suite 100, Frisco, Texas 75033
Toll Free: (800) 388-2601, Tel. 214-618-1100, Fax 214-618-1200, www.gea.com

ORDER CONFIRMATION



No. 340010955
Lopez Foods Cherokee (Oklahoma City, OK)

ANNEX B

TERMS AND CONDITIONS FOR RENTALS

This Annex B applies where the Scope of Supply is for the rental of Goods to Buyer. The terms and conditions of this Annex B shall supersede any conflicting provisions in the Terms.

- Title to Goods and Security Interest in Goods.** Subject to the Buyer exercising its rights pursuant to the Purchase Option (defined below), all title to the Goods will remain with Seller and the Goods will be returned to Seller at the end of the rental period in the same condition as when delivered and will be free and clear of any encumbrances. Irrespective of any Purchase Option, Buyer hereby grants to Seller a security interest in any and all interest that the Buyer may from time to time have in the Goods in order to secure the full and prompt payment and performance by the Buyer. Buyer hereby authorizes Seller to authenticate and/or file all UCC financing statements and amendments that in sole discretions are deemed necessary or proper to secure or protect Seller's interest in Goods in all applicable jurisdictions.
- Operation and Maintenance of the Goods.** Buyer agrees to use the Goods at the address and for the purpose and product(s) set forth in Seller's Offer or the Contract and at no other location and for no other purpose or product unless the prior written consent is obtained from Seller. In no event may the Goods be used on any non-water based or hazardous materials, unless Seller gives its prior written authorization to use the Goods on the specific material intended. The Buyer will not use the Goods on abrasive or corrosive materials unless it has obtained the prior written consent from Seller and follows strictly any and all specific instructions received from Seller with respect to operating and maintaining the Goods when used on such abrasive or corrosive materials. Buyer will not make any other changes, modifications or additions to the Goods or use any non-original spare parts during the rental period without the prior written consent of Seller. If the Buyer fails to strictly observe any of the obligations set forth in this Section 2 with regard to Seller's Goods, Buyer agrees to defend Seller against, and indemnify and save Seller harmless from, any liability or obligation (including the costs and attorneys' fees of any suit or claims related thereto) incurred by Seller as a result of persons being injured or property being damaged directly or indirectly in connection with the operation of such Goods as a result of such failure.
- Warranty Period.** The Warranty Period for leased Goods shall be ninety (90) days from delivery.
- Risk of Loss; Insurance.** All risk of loss or damage to the Goods shall be borne by Buyer beginning with delivery of the Goods to the Buyer and ending with the return delivery to Seller. Buyer will insure the Goods for the amount set forth in Seller's Offer or the Contract against all risk of loss or damage by fire, explosion, and any other risks normally covered by extended coverage insurance and shall deliver to Seller policies of insurance therefor naming Seller as a loss payee and providing that such policies may not be cancelled without ten (10) days' prior written notice to Seller, and Buyer will name Seller as an additional insured on its general liability and property damage insurance (which must provide coverage for combined single limit bodily injury and property damage of not less than \$1,000,000 for each occurrence) to cover the indemnity provisions of paragraph 2 above.
- Defaults and Remedies.** If (i) Buyer ceases doing business as a going concern, (ii) there occurs a proceeding in bankruptcy or under any law for relief of debtors involving Buyer or the enforcement of a lien against the Goods, (iii) there occurs any involuntary transfer of the Buyer's interest in the Goods or the Contract by operation of law, or (iv) there occurs any default by Buyer in payment or performance of any of the customer's obligations which is not cured within fifteen (15) days after written notice thereof to Buyer, then Seller may, without notice to or demand on the Buyer, terminate the rental of the Goods and, in addition to all remedies available to Seller at law or in equity, retake possession of the Goods and remove the Goods or cause the Goods to be removed from the Buyer's premises and lease the Goods for such period, for such rental, and to such persons as Seller shall so elect.
- Fees and Expenses.** Buyer shall pay all reasonable costs and expenses of Seller, including, without limitation, attorneys' and other professional fees, returned check or non-sufficient funds charges, the fees of any collection agencies in the event of default.
- Purchase Option.** If a Seller granted Buyer an explicit option in Seller's Offer or the Contract to purchase the Goods (a "Purchase Option"), Seller and Buyer hereby agree that provided no event of default exists at the end of the original lease term or at any point during the lease term, Buyer shall have the option to purchase the Goods described in Seller's Offer or the Contract for the price set forth in Seller Proposal or the Contract, and upon receipt of the purchase price Seller will transfer to Buyer all of its right, title and interest in the Goods purchased, as-is, where-is without representation and warranty of any kind, express or implied. To exercise the Purchase Option, Buyer must send Seller written notice and remit payment to Seller in the amount of the purchase price (together with any and all sales taxes applicable thereto) on or before the expiration of the lease period. To the extent of any interest that Buyer may now have or hereafter acquire in the Goods, Buyer hereby grants to Seller a security interest in and to the Goods and in any and all proceeds (including, without limitation, insurance proceeds) thereof, all to secure the full and prompt payment and performance by Buyer pursuant to the Rental Letter Agreement and the full and prompt payment of the full purchase price for the Goods if Buyer decides to purchase the Goods.

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GEA Food Solutions North America, Inc.
16005 Gateway Dr. Suite 100, Frisco, Texas 75033
Toll Free: (800) 388-2601, Tel. 214-618-1100, Fax 214-618-1200, www.gea.com

ORDER CONFIRMATION



No. 340010955
Lopez Foods Cherokee (Oklahoma City, OK)

ANNEX C

PURCHASE MONEY SECURITY INTEREST

This Annex C applies to all Seller's Offers and Contracts and is expressly incorporated into the Terms.

1. **Grant of Security Interest.** As security for Buyer's responsibilities under the Contract, Buyer hereby grants Seller a continuing first-priority, purchase-money security interest (hereinafter referred to as the "PMSI") in the Collateral. For purposes of the PMSI, the "Collateral" means collectively: (a) each of the Goods, all repairs thereto and all replacements and substitutions therefor; (b) all additions, attachments and accessories to or for any or all items of the Goods (including without limitation all fittings and fixtures used in connection therewith); and (c) all proceeds (including without limitation insurance proceeds), accounts, accounts receivable, payment intangibles, instruments, documents, chattel paper, general intangibles and other rights arising from the sale, lease, assignment or transfer by Buyer of any or all of the Goods. The PMSI shall be and remain a purchase-money security interest.
2. **Financing Statements.** Buyer, to evidence, perfect and maintain the PMSI, hereby authorizes Seller to prepare and file in each appropriate jurisdiction, at the Buyer's expense (if Seller wishes to charge the Buyer therefor), one or more UCC-1 financing statements (or the then-current form of such statement(s) or documents to achieve the same or similar results), including without limitation each continuation or amendment thereto as Seller deems necessary or desirable.

ORDER CONFIRMATION



No. 340010955
Lopez Foods Cherokee (Oklahoma City, OK)

Please execute and return a copy to GEA Food Solutions **via email to Amanda.Shewbrooks@gea.com**. Please keep a copy for your records.

Lopez Foods hereby acknowledges receipt of **Order Confirmation No. 340010955** for above referenced equipment and understands the attached GEA Food Solutions/Customer List of Responsibilities and Terms and Conditions apply. A Lopez Foods representative has read the above, is authorized to sign for the order, and requests GEA Food Solutions to proceed with processing the order.

Authorized Customer Representative

Title

Signature

Date



Purchase Order

SUPPLIER
GEA FOOD SOLUTIONS NA INC
16005 Gateway Dr., Suite 100
FRISCO, TX 75034

PURCHASE ORDER
E125314
Revision: 1

GEA QF240057820-A GEA CookStar Turbo
PO DATE: February 11, 2022
PROJECT:
BUYER: KKNECHT
STATUS: A - Approved
TERMS:

CONFIRM TO
Lopez Foods Cherokee
EMail: kknrecht@Lopezfoods.com
Phone: (580) 718-4728

INVOICE TO
Lopez Foods - Cherokee
Attn: Wendy Brady - Accounts Payable
3817 NW Expressway, Suite 600
Oklahoma City, OK 73112-1487
Email: wbrady@lopezfoods.com
Phone: (405) 609-7500

SHIP TO
Lopez Foods Cherokee
Attn: Engineering Dept.
1300 S Lake Street
Cherokee, IA 51012
(712) 321-3500

Comments

LINE	PART DESCRIPTION	SUPPLIER PART	QTY UOM	UNIT PRICE	TOTAL TAX AMOUNT	TOTAL
10	GEA QF240057820-A CookStar Turbo 1000 3rd Gen		1.00	2,400,000.000	0.000	\$2,400,000.00

For the purchase of:

One (1) GEA CookStar Turbo 1000 Generation 3 Oven detailed in QF240057820-A.

Overview:

CookStar Turbo 1000-110-138 3rd Gen = \$2,400,000.00

- Extend Main Conveyor 550mm
- Product Height Detector at Infeed
- Preparation for SuperHeat/Smoke System
- Internet Modem

Exhaust Fan (x2) (Included)

GEA Machine Data Interface (Included)

Complete product specifications are contained in the Quote.

Total Amount of Service Line = \$2,400,000.00

Payment Terms:

- 45% down payment of contract value to be invoiced upon receipt of PO, due Net 10 days from date of invoice (DOI).
- 45% of the contract value to be invoiced upon written notification of readiness to ship, but no later than 30 days after notification of readiness to ship should the customer delay shipment, due Net 30 days from DOI.
- 10% of the contract value to be invoiced after commissioning but no later than 90 days after notification of readiness to ship, due Net 30 days from DOI.

Purchase Order Total: **\$2,400,000.00**