

# John W. McDougall Co., Inc. Terms & Conditions of Sale

This Contract is between the Buyer (as specified in the JWMCD Order Confirmation) and JWMCD (as defined in these Conditions).

## 1. Interpretation

- 1.1. In these Conditions including the JWMCD Order Confirmation unless the context otherwise requires, the following words have the following meanings:
- "JWMCD": John W. McDougall Company, Inc., 3731 Amy Lynn Drive; Nashville, TN 37218
- "Buyer": The person as specified in the JWMCD Order Confirmation who agrees to purchase the Goods from JWMCD and to whom JWMCD agrees to sell the goods.
- "Conditions": The terms and conditions of sale at JWMCD set out in this document and includes any special terms and conditions agreed in writing between the Buyer and JWMCD in accordance with the procedure set out in these Conditions.
- "Contract ": The contract for the purchase and sale of the Goods by the Buyer from JWMCD.
- "Delivery address": The address where the Goods are to be delivered by JWMCD (if JWMCD is to deliver) more specifically as detailed in the JWMCD Order Confirmation, and if none is specified then the Buyer shall collect the Goods from JWMCD at a location nominated by JWMCD.
- "Delivery Constraint": Any and all limitations preventing free access of standard length articulated vehicles from the point of manufacture or storage of the Goods by JWMCD to the unloading location on the Delivery address more specifically as set out by the Buyer in the JWMCD Order Confirmation.
- "Delivery Price": The cost of carriage of the Goods from the place of manufacture or storage by JWMCD to the Delivery address if JWMCD is to deliver the Goods to the Delivery address.
- "Estimated Delivery Date": The date or dates as specified in the JWMCD Order Confirmation when JWMCD shall endeavor to deliver the Goods to the Delivery address.
- "Force Majeure": Any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (either involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of supplies or subcontractors.
- "Goods": Fabricated / Processed metal parts and pieces.
- "Goods Price": The price for the Goods at the location that JWMCD shall manufacture or store the Goods.
- "JWMCD Order Confirmation": Document issued by JWMCD with details of the Goods ordered and Buyer details which the Buyer must sign, date, acknowledge and return to JWMCD.
- "Purchase Order ": The agreement for the purchase and sale of the Goods by the Buyer from JWMCD.
- "Seller": John W. McDougall Company, Inc., 3731 Amy Lynn Drive; Nashville, TN 37218
- "Total Price": The sum of the Goods Price and the Delivery Price (if any).
- "Writing": Includes letter, electronic communication, and facsimile that only when in accordance with these Conditions.
- 1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision, as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions for reference only and shall not affect their interpretation.
- ## 2 Basis of the Sale
- 2.1 JWMCD shall sell and the Buyer shall purchase the Goods for the Total Price in accordance with these conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or

- purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No purported violation to these Conditions or any subsequent variation shall be binding on JWMCD unless agreed in writing (which in this case shall not include email) by the General Counsel at the time for JWMCD or an Officer of the JWMCD and agreed in writing by the authorized representative of the Buyer.
- 2.3 JWMCD's employees or agents are not authorized to make any representations or warranties concerning the Goods unless confirmed by JWMCD in writing. IN entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.4 Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information used by JWMCD shall be subject to correction without any liability on the part of JWMCD.
- 2.5 If the Buyer has not signed the JWMCD Order acknowledgment, then acceptance of the Goods (even if later rejected by the Buyer in accordance with these Conditions) shall constitute agreement by the Buyer to these Conditions and to the terms of the Contract.
- 2.6 Any advice or recommendations given by JWMCD or its employees or agents to the Buyer or its employees or agents as to storage, application, installation, or use of the Goods, which is not confirmed in writing by JWMCD, is followed or acted upon entirely at the Buyer's own risk, and accordingly JWMCD shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.7 Seller's acknowledgement and acceptance of Buyer's order is expressly conditioned upon Buyer's acceptance of these terms and conditions. No terms or conditions, and no written or oral agreement that purports to vary these terms and conditions, is binding upon Seller unless set forth in writing, signed by an officer of Seller. BUYER ACKNOWLEDGES THAT BUYER IS NOT RELYING ON ANY REPRESENTATION OR PROMISE OF SELLER THAT IS NOT EXPRESSLY SET FORTH IN THIS PURCHASE AGREEMENT. In the event Buyer fails to accept this Purchase Agree in writing, Buyer's consent to the terms and conditions herein is conclusively presumed, either from Buyer's failure to object within five calendar days in writing or from Buyer's acceptance or use of the material delivered hereunder.
- 2.8 Seller may cancel any order at any time prior to payment by Buyer.
- 2.9 Buyer's wrongful nonacceptance of goods, or cancellation or repudiation of an agreement to purchase goods or services entitles Seller to recover, in addition to any incidental damages caused by Buyer's wrongful nonacceptance, cancellation or repudiation, either (i) in the case of goods which cannot be reasonably resold by Seller to a third party, or service which have already been performed by the Seller, the price of such goods or services; or (ii) in the case of goods for which other buyers exist or services not yet performed, or where any action for the price is not otherwise permitted by law, twenty (20) percent of the contract price as liquidated damages (which constitute a reasonable estimate of Seller's loss and not a penalty). In the case of special orders, all Seller's out-of-pocket expenses, if any, incurred prior to receipt by Seller of notice of cancellation by Buyer, in connection with providing special services, developing special tooling, purchasing special supplies and the like are recoverable, in addition to the foregoing.
- ## 3 Orders and Specifications
- 3.1 No order submitted by the Buyer shall be deemed to be accepted by JWMCD and no contract shall come into effect between the Parties unless and until confirmed and acknowledged in writing by JWMCD.
- 3.2 The Buyer shall be responsible to JWMCD for ensuring the accuracy of the information submitted by the Buyer given in the JWMCD Order Confirmation, and for giving JWMCD any further necessary information relating to the Goods within a sufficient time to enable JWMCD to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the JWMCD Order Confirmation.
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by JWMCD in accordance with a specification submitted by the Buyer, the Buyer shall indemnify JWMCD against all loss, damages, costs and expenses awarded against or incurred by JWMCD in connection with or paid or agreed to be paid by JWMCD in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from JWMCD's use of the Buyer's specification.
- 3.5 JWMCD reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
- 3.6 Where JWMCD manufactures a bespoke product or the Goods are not of a standard size usually produced by JWMCD then the Buyer shall pay the Total Price in advance of any acceptance of the Order by JWMCD.

- 3.7 Buyer has the right to inspect the goods upon arrival. Buyer's inspection rights expire three (3) days after the arrival of the goods at the delivery destination. A failure to make inspection within that time waives notice of any defect that a reasonable inspection would have revealed. A rejection of goods by Buyer is not effective unless written notice of rejection is given to Seller within three (3) days of delivery.
- 4 Price of Goods**
- 4.1 The Buyer shall pay the Total Price of the Goods to JWMCD. JWMCD may quote a price for the Goods. All such prices quoted are valid for 24 hours only and are on an ex-works basis after which time they may be altered by JWMCD without giving notice to the Buyer.
- 4.2 JWMCD reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Total Price to reflect any increase in the cost of raw material or delivery cost to JWMCD which is due to any factor beyond the control of JWMCD.
- 4.3 If the cost of manufacture, storage or delivery of the Goods is increased as a result of the Buyer changing the Estimated Delivery Date, quantity, panel layout or specification for the Goods or where there is any delay resulting from any change of instructions of the Buyer or a failure of the Buyer to give JWMCD adequate information or instructions (including any failure to advise JWMCD of any Delivery Constraint) then JWMCD reserves the right to increase the Total Price to reflect such increase in cost and JWMCD will give notice to the Buyer at any time before delivery of the Goods of such increase in Total Price.
- 4.4 The Total Price is inclusive of the current Davidson County, TN tax rate at time of purchase.
- 4.5 The cost of any pallets or returnable containers or ancillaries will be charged to the Buyer in addition to the Total Price if they are required to ensure safe delivery of the Goods but full credit will be given to the Buyer provided they are returned undamaged to JWMCD within seven days of delivery.
- 4.6 If applicable, color confirmation must be provided by the time specified on the Order Confirmation.
- 4.7 Should JWMCD provide a quote to Buyer for goods, said quote is good for 30 days from date of on face of quotation.
- 4.8 Any delays in authorization to proceed will result in delay costs. Buyer must provide authorization to proceed within 30 days of selection of product and/or color sample.
- 5 Term of Payment**
- 5.1 JWMCD shall be entitled to invoice the Buyer for the Total Price (or, at JWMCD's sole direction the Goods Price or the Delivery Price) at any time after the Contract is entered into.
- 5.2 Within 30 days of the end of the month of the date of JWMCD's invoice, the Buyer shall pay the invoiced sum even if delivery has not taken place and the property in the Goods has not passed to the Buyer. Where the payment days differ from those above these will be stated in the Buyers credit terms with JWMCD.
- 5.3 If the Buyer fails to pay the total of any sum invoiced by JWMCD on the due date stated on the invoice then JWMCD shall be entitled to:
- 5.3.1 terminate the Contract with immediate effect and/or suspend any further deliveries to the Buyer;
- 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other Contract between the Buyer and JWMCD) as JWMCD may think fit (not withstanding any purported appropriation by the Buyer);
- 5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 5% per annum above Barclays Bank Plc base rate from time to time, until payment in full is made with interest to be charged on a daily basis. Buyer will also be charged reasonable storage costs.
- 5.4 JWMCD will not exercise their right to cancel the Contract under clause 5.3 without first notifying the Buyer that he has failed to make payment in full in accordance with these terms of payment and allowing the Buyer three working days from the date of the notification to make the payment in full. JWMCD may give this notification in writing or orally (including by telephone);
- 5.5 If the Buyer makes payment late then the time for delivery of the Goods may be extended by JWMCD by the same period as the payment was late.
- 5.6 If Buyer is purchasing on credit, Buyer must have on file with JWMCD an approved credit application. For any purchase on credit, Buyer consents to Seller's Credit Agreement, the terms and conditions of which Buyer acknowledges having read and understood and incorporated by reference herein. All accounts past due are subject to monthly late charge, not to exceed the maximum allowed by applicable state and federal law. By purchasing from Seller, Buyer represents and warrants that Buyer is not a "consumer" as that term is defined in any applicable state and federal consumer protection laws and Buyer agrees to indemnify and hold harmless Seller against any legal matter based on a claim or finding that Buyer is a "consumer."
- 6 Delivery/Pick Up**
- 6.1 Delivery/Pick Up of the Goods shall be FOB JWMCD Plant unless otherwise stated. If JWMCD agrees to deliver goods to buyer location or other appointed location, deliveries will be made using articulated vehicles as the standard method of delivery, however, JWMCD may use other vehicle types at JWMCD's discretion. If the Buyer has a specific vehicle requirement or if there are any limitations on the size of vehicle used for delivery this must be specified by the Buyer as a Delivery Constraint in the JWMCD Order Confirmation.
- 6.2 Time and date for delivery/pick up shall not be of the essence unless previously agreed by JWMCD in writing. JWMCD will endeavor to deliver/make available the Goods on the Estimated Delivery/Pick up Date(s) but the Goods may be delivered/provided by JWMCD in advance of the Estimated Delivery/Pick up Date(s) upon giving reasonable notice to the Buyer.
- 6.3 JWMCD may elect to deliver/make available the Goods in installments and, where the Goods are to be delivered/made available in installments, failure by JWMCD to deliver/make available any one or more of the installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If JWMCD fails to deliver/make available the Goods (where time is of the essence) for any reason other than Force Majeure or any cause beyond JWMCD's reasonable control or the Buyer's fault, and JWMCD is accordingly liable to the Buyer, JWMCD's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest alternative market) of goods of similar specification to the Goods to replace those not delivered over the Total Price of the Goods.
- 6.5 If the Buyer fails to take delivery/possession of the Goods or fails to give JWMCD adequate instructions at the time stated for delivery/pick up then, JWMCD may:
- 6.5.1 store the Goods until actual deliver and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) charge the Buyer for any balance due to make payment up to the Total Price.
- 7 Risk & Property**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery/pick up at the Delivery/Pick Up address (JWMCD plant unless otherwise agreed upon) or, if the Buyer wrongfully fails to take delivery/possession of the Goods, the time when JWMCD has tendered delivery/availability of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until JWMCD has received in case or cleared funds payment in full of the Total Price and all other goods under any other contract agreed to be sold by JWMCD to the Buyer for which payment is then due.
- 7.3 Until such time as the property in Goods passes to the Buyer, the Buyer shall hold the Goods as JWMCD's fiduciary agent, and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as JWMCD's property.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) JWMCD shall be entitled at any time to require the Buyer to deliver up the Goods to JWMCD and JWMCD shall entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of JWMCD.
- 7.6 The Buyer shall not be entitled to withhold payment of any amount payable under the Contract to JWMCD because of any disputed claim of the Buyer in respect of defective Goods or any other breach of the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to JWMCD any monies which are not then presently payable by JWMCD for which JWMCD disputes liability.
- 8 Warranties & Liability**
- 8.1 Subject to the conditions set out below JWMCD warrants that at the time of delivery/pick up the Goods will correspond with the specification in the quotation and will be free from defects in material and workmanship for a period of six months from the date of their initial use or six months from delivery, whichever is the first to expire.
- 8.2 The above warranty is given by JWMCD subject to the following conditions:
- 8.2.1 JWMCD shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer or any failure by the Buyer to install the Goods correctly or failure to comply with JWMCD's installation guidelines issued from time to time. For the avoidance of doubt, JWMCD is a supplier of Goods and has no input into the design of any project which the Goods maybe incorporated into;
- 8.2.2 JWMCD will be under no liability in respect of any defect arising from fairwear and tear, willful damage, negligence, abnormal working conditions, failure to follow JWMCD's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without JWMCD's approval;

- 8.2.3 JWMCD shall be under no liability for color degradation in any materials or components incorporated in the Goods or used in their manufacture;
- 8.2.4 JWMCD shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the Total Price has not been paid by the due date for payment;
- 8.2.5 If the Buyer makes any material alteration to any of the Goods without JWMCD's prior written approval then all warranties in the Goods either express or implied shall immediately become void.
- 8.2.6 JWMCD shall be under no liability for product/installation failure unless such failure is a direct manufacture defect. Should any property or personal damage occur as a result of the use, insertion and/or installation of product, JWMCD shall not be responsible, and Buyer agrees to indemnify JWMCD against such claims, damages, and other associated costs, including any legal costs associated with defending such claim.
- 8.3 The above warranty does not extend to parts, materials, paint or equipment incorporated in the Goods but not manufactured by JWMCD in respect of which the Buyer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to JWMCD.
- 8.4 Subject as expressly provided in these Conditions, all warranties, representations, statements, conditions or other terms implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 8.5 The Buyer shall within 7 days of the arrival of each delivery of the Goods, notify JWMCD in writing of any defect by reason of which the Buyer alleges that the Goods delivered are not in accordance with the specification and which should be apparent on reasonable inspection.
- 8.6 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.
- 8.7 Notwithstanding any other provision of this Agreement neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance of any of its obligations under this Contract, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.
- 8.8 If at any time JWMCD claims Force Majeure in respect of its obligations under this Agreement with regard to the supply of the Goods, JWMCD shall be entitled to obtain from any other person such quantity of the Goods as JWMCD is unable to supply and JWMCD shall be entitled to supply those goods to the Buyer and the Buyer shall not be entitled to reject those goods on the basis that they have not been manufactured by JWMCD.
- 8.9 As a condition precedent to any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification the Buyer shall notify JWMCD within 7 days after discovery of the defect or failure. If the Buyer does not notify JWMCD accordingly, the Buyer shall not be entitled to reject the Goods and JWMCD shall have no liability for any such defect or failure, and the Buyer shall be bound to pay the Total Price as if the Goods have been in accordance with the Contract and any specification.
- 8.10 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to JWMCD in accordance with these Conditions, JWMCD shall be entitled to repair or replace the Goods (or the part in question) or at JWMCD's sole discretion, refund to the Buyer the Total Price where all of the Goods are defective (or a proportionate part of the Goods Price where not all the Goods are defective) but JWMCD shall have no further liability to the Buyer.
- 8.11 Expect in respect of death or personal injury caused by JWMCD's negligence JWMCD shall not be liable to the Buyer for any indirect, special, incidental, economic or consequential loss or damage including, without limitation, loss or damage incurred as a result of loss of time, loss of savings, loss of data, loss of goodwill, loss of business or loss of profits which arise out of or in connection with the supply of the Goods or their use or sale by the Buyer, except as expressly provided in these Conditions and JWMCD's entire liability for any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage whatsoever, arising out of or in connection with the Contract or otherwise shall not in any event exceed the Total Price of the Goods in respect of any event or series of connected events.
- 8.12 JWMCD shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or failure to perform, any of JWMCD's obligations in relation to the Goods, if the delay or failure was due to any cause beyond JWMCD's reasonable control.
- 9 Indemnity**
- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or sale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, JWMCD shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim against the Buyer provided that:
- 9.1.1 as a condition precedent to the operation of this indemnity the Buyer notifies JWMCD of the claim (or threatened claim) within five working days of the Buyer becoming aware (or five days of when the Buyer should reasonably have been aware) of the claims, whichever is earlier.
- 9.1.2 JWMCD is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.3 the Buyer shall give JWMCD all reasonable assistance for the purposes of any such proceedings or negotiations and shall comply with JWMCD's requirements and instructions; and
- 9.1.4 JWMCD shall be entitled to the benefit of, and the Buyer shall accordingly account to JWMCD for, all damages and costs (if any) awarded in favor of the Buyer.
- 10 Insolvency of Buyer**
- 10.1 This clause applies if:
- 10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) become bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 10.1.3 the Buyer ceases or threatens to cease, to carry on business; or
- 10.1.4 JWMCD reasonably believes that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then JWMCD shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Total Price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.
- 10.3 IF any of the above mentioned events occur as outline in clauses 10.1.1-10.1.3, then the Buyer shall inform JWMCD within 5 business days of such an event occurring. The buyer is obliged to have adequate insurance run off cover in place for a minimum period of 6 years if any of the events as outlined in clauses 10.1.1-10.1.3 occur. If no such cover is in place when a liquidator is appointed then the liquidator is obliged to take out such cover.
- 11 Disputes**
- 11.1 If a dispute or difference arises under this Contract it shall be settled in accordance with the provisions of this clause.
- 11.2 When a dispute arises which one of the Parties requires to be settled in accordance with this clause that party shall give a notice in Writing to the other party stating the nature of the dispute and that the provisions of this clause are invoked.
- 11.3 Direct Negotiation
- 12.3.1 When a Party has given notice under clause 11.2 that a dispute has arisen both Parties shall attempt to settle the dispute amicably by direct negotiation before the commencement of mediation or arbitration. Within 28 days of the notice given under clause 11.2 representatives of both Parties shall meet to endeavor to settle the dispute. Both representatives shall have authority of the Party they represent to settle the dispute on the Party's behalf. The meeting may take place face to face or by way of telephone or video-conference or similar by agreement between the Parties. The status of the meeting shall be "without prejudice" unless and until agreement is reached between the representatives. Unless both Parties agree otherwise mediation may be commenced on or after the twenty eighth day after the day on which the notice under clause 11.2 was given, even if no attempt at direct negotiation has been made.
- 11.4 Mediation
- 11.4.1 if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations in accordance with clause 12.3 after a period of 28 days then either Party shall give a notice requiring the matter to be referred to mediation;
- 11.4.2 the Parties shall endeavor to settle the matter by mediation
- 11.5 Arbitration
- 11.5.1 Provided that the Parties shall have attempted to settle the dispute in accordance with the procedure set out in this clause as a condition precedent to arbitration, and provided that at least 28 days shall have elapsed since the notice under clause 11.4.1 was given then any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with the Rules and Procedures of the American Arbitration Association.
- 11.5.2 Neither Party may refer a dispute to arbitration unless:
- 11.5.2.1 The dispute has previously been referred to Mediation in accordance with clause 11.4; or

- 11.5.2.2 A period of 28 days has elapsed since the notice requiring mediation under clause 11.4.1 and there has been no mediation or there has been no settlement of the dispute at that mediation.

#### **Conduct of arbitration**

- 11.5.3 Any arbitration shall be conducted in accordance with the latest version of the Rules and Procedures of the American Arbitration Association for disputes.

#### **Notice of reference to arbitration**

- 11.5.4 Where either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration, identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties.

#### **Powers of Arbitrator**

- 11.5.5 The Arbitrator shall, without prejudice to the generality of his powers, have the power to rectify this Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which should be paid by one Party to the other and to determine all matters in dispute which shall be submitted to him.

#### **Effect of award**

- 11.5.6 Subject to clause 11.5.7 the award of the Arbitrator shall be final and binding on the Parties save that the Parties agree to:
- 11.5.6.1 apply to the courts to determine any question of law arising in the course of the reference; and
- 11.5.6.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

#### **Limitations of Award**

- 11.5.7 SELLER IS NOT LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, LOSS OF ANTICIPATED PROFIT, UNABSORBED OVERHEAD, INTEREST ON CLAIMS, PRODUCT DEVELOPMENT AND ENGINEERING COSTS, FACILITIES AND EQUIPMENT REARRANGEMENT COSTS OR RENTAL, UNAMORTIZED DEPRECIATION COSTS, AND GENERAL AND ADMINISTRATIVE BURDEN CHARGES TO ANY PERSON, WHETHER BASED UPON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, BREACH OF CONTRACT OR ANY OTHER THEORY, REGARDLESS OF WHETHER THE REPLACEMENT OR REFUND REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON WHATSOEVER. Seller will not be liable for any damages attributable to product abuse, misuse, neglect or any other cause, which is not the fault of Seller.
- 11.5.7.1 The limitation of liability set forth in this paragraph will survive termination or cancellation of this Agreement. For the avoidance of doubt, Seller is not liable for any damages whatsoever whether direct or indirect resulting from any delay in delivery of the goods or failure to deliver the goods in a reasonable time – whether or not such delay or failure is caused by Seller.
- 11.5.7.2 Seller has no liability to any person other than the Buyer by virtue of the sale of the goods or services, or any other matters contemplated by this Agreement. There are no third-party beneficiaries to this Agreement. If Buyer is purchasing goods for re-sale, Buyer will add Seller as a party protected by Buyer's warranty and limit of liability provisions in Buyer's terms of sale.

## **12 General**

- 12.1 Any notice required to be given to the Buyer under these Conditions shall be in writing addressed to the Buyer at its registered office or principal place of business or last notified email address.
- 12.2 Any notice required to be given to JWMCD shall be in Writing addressed to John W. McDougall Co., Inc., 3731 Amy Lynn Drive, Nashville, TN 37218 or any other address notified in Writing by JWMCD to the Buyer.
- 12.3 No waiver by JWMCD of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision shall not be affected thereby.
- 12.5 The Contract shall be governed by the laws of the state of Tennessee. Venue shall be in Davidson County, TN.