



SCHMIDT INDUSTRIAL SERVICES LLC
TERMS AND CONDITIONS – SERVICE PROVIDER

1. AGREEMENT

1.1 These Terms and Conditions (collectively, these “**Terms**”) are the only terms that govern the provision of services to SCHMIDT INDUSTRIAL SERVICES LLC (“**Schmidt**”) by the service provider that has accepted Schmidt’s purchase order (the “**Purchase Order**”).

1.2 Service Provider’s written proposal or statement of work that has been accepted by Schmidt (as applicable, the “**Proposal**”), Schmidt’s purchase order (the “**Purchase Order**”) and these Terms (collectively with the Proposal and Purchase Order, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Proposal, these Terms shall govern. In the event of any conflict between these Terms or the Proposal, on the one hand, and the Purchase Order, on the other, the Purchase Order shall govern. These Terms prevail over any of Service Provider’s general terms and conditions and Schmidt shall not be bound by any of Service Provider’s general terms and conditions.

1.3 Service Provider shall be deemed to have accepted this Agreement and shall be bound by this Agreement if any one or more of the following occur: (a) Service Provider executes and delivers the Purchase Order to Schmidt, (b) Service Provider commences performance of the Work, or (c) Schmidt or Service Provider exchange electronic correspondence indicating that the Service Provider has accepted the Purchase Order.

2. WORK

Service Provider shall provide the work, services and/or goods to Schmidt as described in the Purchase Order (the “**Work**”), in accordance with these Terms. The Work includes the furnishing and delivery of all labor, supervision, materials, tools, equipment and supplies necessary to provide and perform the Work, excepting only such items which Schmidt has expressly agreed in writing to provide.

3. INVOICING AND PAYMENT

Service Provider shall send its invoice to Schmidt’s email address or mailing address shown on the Purchase Order (unless otherwise directed by Schmidt). Payment will be made in accordance with the payment terms set forth on the Purchase Order.

4. RISK OF LOSS

Service Provider assumes all risk of loss, damage, theft, or destruction of any tools, equipment, materials, or other property used by Service Provider in connection with the Work, whether owned by Service Provider or provided by Schmidt or its customer or subcontractor. Service Provider will promptly repair or replace, at its own expense, any property of Schmidt or its customer or subcontractor that is lost, damaged, or destroyed while in Service Provider’s possession or control, except to the extent caused solely by Schmidt’s (or its customer’s or subcontractor’s) negligence or willful misconduct.

5. WARRANTY

5.1 Service Provider guarantees and warrants that: (a) all Work will be satisfactorily conducted and completed in a professional and workmanlike manner, in conformity with this Agreement, and in a manner that complies with all applicable laws; (b) in performing the Work, Service Provider and its personnel will exercise that degree of care, skill and diligence commensurate with that typically exercised by recognized professionals performing work of a similar nature to the Work; (c) all Work shall be free from defects in materials and workmanship; (d) no material, supplies or equipment incorporated into the Work shall be subject to any chattel mortgage or conditional sale, contract or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier of such material, supplies or equipment; (e) title to all materials, supplies and equipment installed or delivered, together with all improvements and appurtenances constructed or placed thereon, by Service Provider, are free from any claims, liens or charges and shall pass to Schmidt or its customer upon delivery; (f) Service Provider shall obtain and maintain all necessary licenses, certificates, permits and consents and comply with all notice requirements in relation to the Work before the date on which the Work is to start; and (g) the Work and all materials provided or used by Service Provider in connection with the Work do not and will not infringe, misappropriate, or otherwise violate any intellectual property or proprietary rights of any third party.



5.2 Service Provider agrees to correct, at Service Provider's sole expense, any Work discovered at any time during the performance of the Work and up to the date that is one (1) year after final acceptance of the Work, that does not comply or conform with the requirements of this Agreement or that contains defects or deficiencies, and Service Provider will be liable to Schmidt for all losses, damages, costs and expenses arising from the non-conforming or deficient Work, including, but not limited to, the cost of de-installation and re-installation of any non-conforming Work, transportations costs, and the expense of making good all other property destroyed or damaged by the non-conforming or deficient Work or as a result of Service Provider's actions to remedy any Work. Schmidt shall provide Service Provider with written notice of any such non-conformity or deficiency. Service Provider shall promptly commence the correction of the non-conforming or deficient Work following Schmidt's notice and thereafter complete the correction as soon as reasonably possible. In the event of Service Provider's failure to promptly commence to correct such non-conformity or deficiency or thereafter complete the correction within a reasonable time, or, if in its sole discretion, Schmidt determines the non-conforming or defective Work creates an immediate risk to person or property, Schmidt may correct such non-conformity or deficiency and charge Service Provider for all losses, damages, costs and expenses related thereto or deduct all such amounts from amounts otherwise payable to Service Provider. Such one (1) year period after final acceptance shall be extended for latent defects not discoverable within the one-year period until such time as the latent defect is reasonably discoverable. The warranty period for re-performed or corrected work will run one year from the date of re-performance or correction. In no event will any work undertaken by Schmidt pursuant to this Section 5 limit, impair or void any performance or other guaranties or warranties provided by Service Provider.

5.3 The guarantees and warranties set forth in this Agreement shall not affect or limit any of Schmidt's other rights or remedies provided by this Agreement or applicable law. The time periods in this Section 5 relate only to the specific obligations of Service Provider to correct the Work and have no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor the time within which proceedings may be commenced to establish Service Provider's liability with respect to Service Provider's obligations other than to correct the Work.

6. TITLE AND LIENS

Title to all equipment and other goods delivered by Schmidt or its customer or subcontractor to Service Provider for the Work or repairs to the Work shall at all times be and remain with such delivering party. Service Provider shall protect, indemnify, defend and hold Schmidt and parties in privity with Schmidt harmless from, and shall keep the equipment and property of such parties free and clear of, all liens, claims, assessments, fines and levies created or caused by Service Provider or its subcontractors, except such statutory and/or common law liens, claims, privileges, or security interests on the property of Schmidt as Service Provider itself may have as a result of Schmidt's non-payment when due of undisputed amounts owed to Service Provider for Work performed in accordance with this Agreement. Upon request, Service Provider will provide Schmidt with a sworn affidavit from an authorized representative attesting that its subcontractors have been fully paid for any Work performed by such subcontractors. Schmidt may deduct or set-off from any payments due under this Agreement or under any other agreement with Service Provider any amounts paid by Schmidt to prevent or remove liens, claims, debts or encumbrances which are the responsibility of Service Provider or its subcontractors.

7. SCHMIDT'S OBLIGATIONS

7.1 Schmidt shall cooperate with Service Provider in all matters relating to the Work and provide such access to Schmidt's or its customer's premises, or such other facilities as are reasonably necessary for Service Provider to perform the Work.

7.2 Schmidt shall respond promptly to any Service Provider request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Service Provider to perform Work in accordance with the requirements of this Agreement.

7.3 Schmidt shall provide such information as Service Provider may reasonably request to carry out the Work in a timely manner.

8. CHANGE ORDERS

8.1 If either party wishes to change the scope or performance of the Work, it shall submit details of the requested change to the other party in writing. Service Provider shall, within a reasonable time after such request, provide a written estimate to Schmidt of: (a) the likely time required to implement the change; (b) any necessary variations to



the fees and other charges for the Work arising from the change; (c) the likely effect of the change on the Work; and (d) any other impact the change might have on the performance of this Agreement.

8.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a “**Change Order**”). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

9. INSPECTION; TESTING

The Work may be subject to inspection by Schmidt or its customer or subcontractor, and Service Provider shall promptly comply with any requests for such inspections. No such inspection (or failure to inspect) shall constitute an acceptance of any Work by Schmidt or release Service Provider from any liability hereunder. Service Provider shall furnish to Schmidt all information and data as may be reasonably required to perform any inspection of the Work.

10. PROGRESS

Time is of the essence of Service Provider’s obligations under this Agreement. Schmidt reserves the right to cancel this Agreement, in whole or in part, and reject delivery of any Work, if delivery is not undertaken, performed and completed when specified or if such performance or delivery is not in accordance with this Agreement.

11. INTELLECTUAL PROPERTY; CONFIDENTIALITY; NON-CIRCUMENTION

11.1 Any drawings, reports, designs, specifications, or other documentation associated with Work, which the Service Provider or its subcontractors may produce during the provision of the Work (“**Work Product**”), will be the property of Schmidt and a copy of the Work Product will be furnished to Schmidt by the Service Provider. To the extent any Work Product does not constitute “work made for hire,” Service Provider irrevocably assigns to Company all right, title, and interest in and to the Work Product, including all intellectual property rights. Service Provider waives any moral rights and agrees to execute all documents and take all actions requested by Schmidt to evidence, maintain, or enforce Schmidt’s rights in the Work Product.

11.2 Service Provider shall not have any ownership rights in, and shall not distribute to any third parties (other than approved subcontractors as necessary to complete the Work), any drawings, plans, specifications, or other documentation provided by Schmidt.

11.3 All inspection reports, test reports and material lists pertaining to a specific job shall be furnished to Schmidt by the Service Provider upon request. Any parts manufactured by the Service Provider will be marked to identify the part as having been manufactured by the Service Provider upon request. Service Provider shall not incorporate into the Work or Work Product any processes, components or know-how that infringe on any patents or other intellectual property rights of any third parties.

11.4 Any information disclosed by Schmidt to Service Provider incident to the performance of this Agreement (“**Confidential Information**”), whether orally or in writing, including but not limited to information related to Schmidt’s products, services, methodologies, formulas, processes, customers and the existence of this Agreement itself, is disclosed in confidence for the sole and exclusive use of Service Provider for the performance of the Work. Service Provider shall not, and shall cause its personnel not to, publish or otherwise disclose Confidential Information to others without the express written consent of Schmidt, and then such a disclosure may only be made after execution of a confidentiality agreement (with terms similar to those of this Section 11) by the third party with whom such Confidential Information will be shared. “Confidential Information” does not include any information that: (a) is or becomes generally available to the public other than as a result of Service Provider's breach of this Agreement or any other agreement; (b) is or becomes available to Service Provider on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Service Provider’s possession prior to Schmidt's disclosure; or (d) was or is independently developed by Service Provider without using any Confidential Information.

11.5 In the absence of a signed agreement to the contrary, no information disclosed by Service Provider to Schmidt shall be considered confidential.

11.6 From and after the effective date of this Agreement (including following termination or expiration of this Agreement), Service Provider shall not, directly or indirectly: (a) take any action that has the purpose or effect of circumventing Schmidt’s relationship with any customer, client, vendor, or other business contact of Schmidt with whom Service Provider had contact or received information about in connection with the Work; (b) seek to by-pass, avoid, or otherwise circumvent Schmidt in entering into business arrangements, opportunities, relationships, or agreements that relate, directly or indirectly, to the Work or the Confidential Information, including through the



exploitation or other use of such Confidential Information; (c) take any action intended to replicate, derive, modify, substitute, or circumvent any Confidential Information or goods sold or services rendered by Schmidt; or (d) permit or authorize any third party to do any of the foregoing on its behalf or for its benefit. Any attempt to do so, whether successful or not, shall constitute a material breach of this Agreement.

11.7 Schmidt shall be entitled to injunctive relief for any breach of this Section 11, in addition to any other remedies available at law or in equity.

12. PUBLICITY; REPRESENTATION

12.1 Service Provider shall not issue any press releases or similar public announcements concerning this Agreement or any Work hereunder without the prior written approval of Schmidt.

12.2 Service Provider and its personnel are strictly prohibited from displaying or otherwise using Schmidt's name, logo, trademarks, service marks or any other brand elements in any form, including on Service Provider's website, marketing materials, social media, proposals, apparel or vehicles without Schmidt's prior written approval, in each instance.

12.3 Service Provider and its personnel will not state or suggest that it is employed by, affiliated with, endorsed by, or acting on behalf of Schmidt, except with Schmidt's express written consent. Service Provider and its personnel may not make any public statements regarding the relationship between the parties without Schmidt's express written consent.

12.4 Service Provider and its personnel are strictly prohibited from (a) taking or creating any photographs, videos, audio recordings, screenshots, or other images or recordings of Schmidt's or its customers' or subcontractors' premises, worksites, personnel, systems, equipment or materials; and (b) posting, publishing, or sharing any information relating to Schmidt or its customers or subcontractors, the Work, or the parties' relationship on social media, websites, marketing materials, or any other public forum, in any form, without Schmidt's prior written consent.

13. INDEMNITY

13.1 To the maximum extent permitted by law, Service Provider shall defend, indemnify, and hold harmless any and all of Schmidt, Schmidt's affiliates, customers, subcontractors and subsidiaries, and each of their respective directors, officers, partners, employees, representatives and agents ("**Indemnified Parties**") from and against any and all claims, demands, causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses and expenses (including, without limitation, expenses, costs and reasonable attorneys' fees and expenses incurred by any Indemnified Parties' defense or enforcement of its indemnification rights) arising from or related to: (a) any claimed or actual infringement or contributory infringement of any patent, copyright, trademark or other intellectual property right, or violation of any trade secret or any other intellectual property right, by any or all of the Work and/or the use of the same for its ordinary intended purposes, as well as any special purposes specified in this Agreement or identified by either party in writing; (b) labor or material liens, privileges, fees, commissions or other compensation claimed by any third party because of any Work provided, performed or rendered for Schmidt in connection with this Agreement; (c) bodily injury to or death of any person, or damage to any property whatsoever, caused by, resulting from, occurring in connection with, or arising out of any Work provided by Service Provider or any of its subcontractors; and (d) Service Provider or its subcontractors' failure to comply with applicable laws and regulations.

13.2 It is the intention of the parties that the indemnity obligations of Service Provider are without regard to whether the strict liability, fault, concurrent or contributory negligence, whether active or passive, of the Indemnified Parties is a factor and such indemnity obligations are intended to protect the Indemnified Parties against the consequences of their own strict liability, fault, concurrent or contributory negligence, whether active or passive. Only those matters which are determined to be a result of the sole negligence or willful misconduct of the Indemnified Parties shall be excluded from Service Provider's obligation to indemnify.

14. LIMITATION OF LIABILITY

14.1 IN NO EVENT SHALL SCHMIDT BE LIABLE TO SERVICE PROVIDER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SCHMIDT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND



NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 IN NO EVENT SHALL SCHMIDT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THE APPLICABLE PURCHASE ORDER.

15. SET-OFF RIGHTS

In addition to any other right or remedy available to Schmidt at law, in equity, or under this Agreement, Schmidt may deduct or set-off from any payments due hereunder or under any other agreement with Service Provider any amounts which Service Provider owes Schmidt under this Agreement.

16. DEFAULT; TERMINATION

Schmidt shall have the right to terminate this Agreement, in whole or in part, without cause at any time (even after acceptance and part performance by Service Provider). In such event, Schmidt's sole liability shall be limited to payment (i) for completed Work at the contract price, and (ii) for actual payments made by Service Provider to third parties directly attributable to any incomplete Work, provided that Service Provider is not then in breach of this Agreement. Schmidt shall also have the right to delivery of any such undelivered Work included in Service Provider's claim pursuant to the foregoing subsection (i).

17. INSURANCE

Service Provider shall, at its own expense, maintain and carry insurance in full force and effect as required by Schmidt. Upon Schmidt's request, Service Provider shall provide Schmidt with a certificate of insurance from Service Provider's insurer, evidencing the required insurance coverage. If requested by Schmidt, such certificate of insurance shall name Schmidt as an additional insured. Service Provider shall provide Schmidt with thirty (30) days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy. Except where prohibited by law, Service Provider shall require its insurer to waive all rights of subrogation against Schmidt's insurers and Schmidt.

18. TAXES

18.1 Service Provider shall be responsible for, and shall hold Schmidt harmless from, the reporting, filing and payment of any taxes (and any related fines, penalties or interest) imposed directly or indirectly on Service Provider or its employees or agents as a result of Service Provider's performance of this Agreement. Such taxes include, but are not limited to, the payment of all corporation or franchise taxes, value added tax, sales or use taxes, excise or severance taxes, gross receipts taxes, contributions or taxes for unemployment insurance, old age retirement, other benefits, pensions or annuities and wage and income taxes with respect to persons directly or indirectly performing services under this Agreement.

18.2 Service Provider's invoices shall separately itemize all sales and use taxes included in any amounts due from Schmidt. Service Provider shall be solely responsible for payment of any sales and use taxes not separately itemized on its invoices.

19. SAFETY

19.1 Service Provider will, at all times, take all reasonable precautions to ensure the safety of personnel and equipment and to ensure that it, its personnel and the performance of the Work strictly comply with (a) all applicable federal, state, and local safety laws and regulations; (b) all industry-standard safety practices; and (c) all safety rules, policies, protocols, and site requirements established by Schmidt or its customers or subcontractors (including any safety and health guidelines, drug and alcohol policy requirements and any applicable on-site contractor insurance requirements). Service Provider is responsible for training its personnel, providing all required protective equipment, and enforcing compliance. Schmidt may remove from its premises, or the premises of its customers, any Service Provider personnel who fail to follow safety requirements.

19.2 Contractor shall perform the Work in a manner protective of the work site, its employees, the public, and the environment, taking all reasonable and necessary actions, including, but not limited to, those required by any applicable laws and regulations, Schmidt's and/or its customer's work site specific work rules, and prudent industry practices. Service Provider shall take all necessary and proper precautions to protect the Work, the site of the Work,



and all persons from damage or injury. Service Provider is responsible for the discovery, determination, and correction of any conditions created by its personnel or the personnel of subcontractors that may cause such damage or injury. Service Provider shall be responsible for any damage to Schmidt's or its customer's property, real (immovable) or personal (movable), that occurs as a result of the performance of the Work.

19.3 Nothing in this Agreement shall obligate Schmidt to ensure the compliance or safety of Service Provider, its personnel or the Work.

19.4 Service Provider has satisfied itself by its own investigation, and acknowledges responsibility for determining the effects, of local conditions existing at Schmidt's and/or its customer's or subcontractor's facility. Service Provider acknowledges and agrees that it has assumed the sole obligation and duty to provide a safe place to work for its employees and its subcontractors' employees at the work site, and agrees that Schmidt has no responsibility therefor, and that any claim for damages by employees of Service Provider or its subcontractors against Schmidt alleging that Schmidt failed to furnish a safe place to work shall not be construed as relieving Service Provider of its indemnity obligations to Schmidt under the indemnification section of this Agreement or any of its other obligations under this Agreement.

20. EQUAL EMPLOYMENT OPPORTUNITIES

Service Provider agrees, and must contractually obligate its subcontractors (Service Provider and each such subcontractor may be referred to in this Section 20 individually as an “**Employer**” and collectively as the “**Employers**”) to agree, that with respect to the provision of the Work the following requirements apply:

20.1 No Employer may discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income. Each Employer must take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the state setting forth the provisions of this nondiscrimination clause. In addition, each Employer, in all solicitations or advertisements for employees, must state that all qualified applicants will receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

20.2 Service Provider, in order to demonstrate compliance with the terms of this Section 20, must cooperate with and promptly and accurately respond to inquiries about compliance with equal employment opportunity regulations of federal, state and municipal agencies.

20.3 Each Employer must include the provisions of this Section 20 in every contract entered into in connection with the performance of the Work, and must require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any affiliate performing the Work so that each such provision will be binding upon each contractor or subcontractor, as the case may be.

21. FORCE MAJEURE

Neither party shall be held responsible for any loss, damage, delay or lack of delivery arising from fire; strikes, lockouts, injunction or other labor troubles; governmental intervention; war; riots; acts of terrorism or cyber security breaches; explosion; weather; flood; pandemics, epidemics, acts of God or nature; inability to obtain or a shortage of, fuel, power, raw materials, labor, containers or transportation; accident; breakage of machinery or other apparatus; disruption of normal supplier channels of distribution; or any other act or force beyond the affected party's reasonable control and not caused by the affected party (a “**Force Majeure Event**”), provided that if Work is suspended for at least fifteen (15) days by Service Provider due to a Force Majeure Event, Schmidt may cancel, without liability, such Work and/or this Agreement.

22. ASSIGNMENT; SUBCONTRACTORS

Service Provider shall not subcontract, assign, transfer or delegate any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Schmidt. Any purported subcontract, assignment or delegation in violation of this Section 22 shall be null and void. No subcontract, assignment or delegation shall relieve



the Service Provider of any of its obligations under this Agreement. Schmidt may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Schmidt's assets without Service Provider's consent.

23. SUCCESSORS AND ASSIGNS

This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective permitted successors and permitted assigns.

24. ENTIRE AGREEMENT

This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

25. NOTICES

All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other party at its address set forth on the Purchase Order (or to such other address that the receiving party may designate from time to time). All such notices must be delivered by nationally recognized overnight courier, certified or registered mail (in each case, return receipt requested, postage prepaid) or electronic mail (with confirmation of receipt).

26. SEVERABILITY

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. AMENDMENTS

No amendment to or modification of this Agreement is effective unless mutually agreed upon in writing.

28. WAIVER

No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

29. SURVIVAL

The rights and obligations of the parties which, by their nature, should survive termination or expiration of this Agreement, including but not limited to Sections 11, 12, 13, 14 and 30 will survive any such termination or expiration of this Agreement.

30. GOVERNING LAW AND VENUE

This Agreement, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement and all contemplated transactions, in any forum other than the US District Court for the District of Delaware or, if such court does not have subject matter jurisdiction, the courts of the State of Delaware, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in such courts. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

31. RELATIONSHIP OF PARTIES.



SCHMIDT INDUSTRIAL SERVICES LLC
418 W FRONT STREET, CHESTER, PA 19013
610-874-8436
EIN: 99-4775276

The relationship between the parties is that of independent contractors. The details of the method and manner for performance of the Work by Service Provider shall be under its own control, Schmidt being interested only in the results thereof. The Service Provider shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the Work. Nothing in this Agreement shall give Schmidt the right to instruct, supervise, control, or direct the details and manner of the completion of the Work. The Work must meet Schmidt's final approval and shall be subject to Schmidt's general right of inspection throughout the performance of the Work and to secure satisfactory final completion. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

32. THIRD PARTY BENEFICIARIES

Except with respect to the Indemnified Parties, this Agreement benefits solely Schmidt and Service Provider and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.