

STATEMENT OF TERMS AND CONDITIONS  
OF  
ASHLAND EQUIPMENT A DIVISION OF SINGER MD, LLC

This Statement of Terms and Conditions (these “Terms and Conditions”) shall apply to all purchase orders and other agreements entered into between Ashland and the Vendor for the Vendors provision of product and equipment (collectively, the “Equipment”) and/or the installation and servicing of such Equipment (collectively, the “Services”) to any customer of Ashland (the “Customer”), as the case may be. These Terms and Conditions shall not constitute a commitment on the part of Ashland or the Customer to purchase any Equipment or Services from the Vendor. In each case, the purchase of any Equipment and/or Services from the Vendor shall be made pursuant to a separate agreement by and between Ashland and the Vendor (each, an “Agreement”), of which these Terms and Conditions are incorporated by reference therein).

Any capitalized defined term not otherwise defined in these Terms and Conditions shall have the meaning as defined in the Agreement.

1. Delivery/Performance. The scope of the Vendor’s work, including but not limited to the specific provisions in the Agreement for the timing and place of delivery of the Equipment and/or the performance of the Services, shall be as provided in the Agreement, subject to the following additional terms and conditions:

(a) Any shipment evidencing any defects or deviations from the specifications set forth in the Agreement shall be immediately replaced by the Vendor at no cost to Ashland or the Customer.

(b) Any Equipment delivered in error or over-shipment in quantity will be returned at the Vendor’s expense in accordance with the Vendor’s shipping instructions.

(c) The risk of loss for damage to the Equipment shall pass to Ashland only upon satisfactory delivery of the Equipment to Ashland.

(d) No dispute under the Agreement or these Terms and Conditions, nor any withholding of any part of the Purchase Price by Ashland as permitted hereunder, shall excuse the Vendor’s obligation to continue performing under the Agreement.

(e) The parties acknowledge and agree that time is of the essence under the Agreement.

2. No Damages for Delay. Ashland shall have the right to determine and, if necessary, change the time, order and priority in which any of the Equipment shall be delivered and/or Services shall be performed. In the event the Vendor’s performance hereunder is delayed without the fault or responsibility of the Vendor, the time for performance by the Vendor shall be extended by a Change Order (as hereinafter defined).

3. Payment. Ashland shall pay the amounts for the Equipment and the Services, as applicable (collectively, the “Purchase Price”), in the amounts, in the manner and at the time or times as stated in the Agreement, subject to the following additional terms and conditions:

(a) The Purchase Price shall be payable by Ashland for the satisfactory performance by the Vendor only upon receipt by Ashland of payment from the Customer for the Equipment and/or Services provided by the Vendor.

(b) Ashland shall have the right to withhold any payment of the Purchase Price otherwise due hereunder: (i) in the event of any termination of the Agreement by Ashland pursuant to Section 8(a); or (ii) to cover Ashland’s reasonable estimate of costs or liability Ashland has incurred, or may incur, for which the Vendor may be responsible, all to the extent allowed by applicable state or local law. Appropriate adjustments to withholdings shall be made when the exact amounts owed hereunder are determined.

4. Change Orders. Ashland may at any time, unilaterally or by agreement with the Vendor, make changes in the purchase and delivery of the Equipment and the performance of the Services, provided that any such unilateral order or agreement shall be in writing (each a “Change Order”). The Vendor shall perform the work hereunder as changed by one or more Change Orders without delay. The Vendor shall be entitled to equitable adjustment of the Purchase Price for any such Change Order according to the pricing terms set forth in the Agreement. If requested by Ashland, the Vendor shall provide Ashland with a reasonable, written price quotation for any proposed Change Order. If the Vendor does not do so and Ashland is required to submit a price quotation to the Customer that includes a proposed change regarding the Equipment or the Services, Ashland shall use its reasonable best estimate of the proposed change as it affects the Agreement in its quotation to the Customer, which estimate shall be the maximum equitable adjustment due to the Vendor.

5. Warranties.

(a) The Vendor warrants that the Equipment will be free from defects in material and workmanship and that the Equipment will perform in accordance for a period of not less than twelve (12) months from the date of delivery to Ashland or the Customer, as applicable (the “Warranty Period”). The Vendor will repair or replace any defective Equipment within the Warranty Period.

(b) The Vendor warrants that all of the Equipment and Services delivered, sold or transferred to any Customer: (i) shall be in full compliance with all applicable laws, ordinances, rules and regulations promulgated by the federal and state governments, and then current applicable rules, standards and regulations promulgated by applicable industry standards; (ii) shall be manufactured, stored and delivered in accordance with any applicable law, ordinance or regulation of any other federal, state or local governmental or regulatory authority, as applicable; and (iii) shall not be misbranded within the meaning of any applicable law, ordinance or regulation of any other federal, state or local governmental or regulatory authority, as applicable.

(c) The Vendor expressly warrants that all of the Equipment and Services furnished to Ashland or any Customer, as applicable, pursuant to the Agreement: (i) will conform to the specifications set forth in such Agreement; (ii) will be fit and sufficient for the use of such Equipment; (iii) will be merchantable, of good quality and free from defects, whether patent or latent; and (iv) will be free from defects in design or production. Any shipment evidencing any defects or deviations from the specifications set forth in the Agreement shall be immediately replaced by the Vendor at no cost to Ashland or the Customer.

(d) All warranties, whether express or implied, relating to the Equipment and Services shall run to Ashland, its successors, and assigns, or the Customer, as applicable. These warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

(e) For a period of at least one (1) year from the date of manufacture, the Vendor agrees to keep true, accurate and complete records of manufacture, storage, shipment and sale of the Equipment and the Services performed in such form as Ashland may now or hereafter require and, upon request by Ashland, to periodically furnish Ashland with such information.

6. Inspection. Ashland shall have the right to inspect, upon 24 hours advance notice but during normal business hours: (a) the plant and/or manufacturing facilities of the Vendor at which the Equipment is being manufactured or prepared for shipment; (b) all of the Vendor's facilities and equipment relating to manufacture, storage and delivery of the Equipment and provision of the Services; (c) the Equipment prior to its shipment to any of the Customers and at the Customer installation site to assure the Vendor's compliance with the terms and provisions of these Terms and Conditions.

7. Indemnification. In addition, the Vendor hereby indemnifies and saves harmless Ashland and its affiliates, partners, members, managers, officers, directors, employees and representatives against any and all loss, damage, liability, claim, demand, suit, and expense (including attorneys' fees and reasonably related costs and expenses resulting from injury or harm (including death)) to all persons or property (including property of Ashland) arising out of or in any way connected with the failure of the Equipment and/or Services to satisfy any of the representations, warranties or covenants set forth in the Agreement or these Terms and Conditions. Ashland agrees to advise the Vendor in the event Ashland receives notice that a claim has been or may be filed with respect to a matter covered by this indemnity. If a claim results in legal action, and the Vendor has assumed the investigation and settlement of the underlying claim, then the Vendor shall retain counsel in connection therewith. If the Vendor fails to assume such defense, Ashland may defend the action in the manner it deems appropriate, and the Vendor shall pay to Ashland all costs, including reasonable attorneys' fees, incurred by it in effecting such defense, in addition to any sum which such party may pay by reason of any settlement or judgment against it. Any release of liability arising out of a claim shall release Ashland from all liability.

8. Ashland's Right to Terminate.

(a) For Cause. If the Vendor fails or refuses to comply with any of its obligations under the Agreement or these Terms and Conditions, resulting in any detriment to Ashland and/or the Customer, and/or fails to supply Equipment or perform the Services to the standards provided herein,

as determined by Ashland in its reasonable discretion, then Ashland may, with cause having been shown, terminate the Agreement and any contracts or orders to purchase made pursuant to the Agreement, immediately upon notice to the Vendor, and Ashland shall have no further obligations, including obligations to purchase from the Vendor, and all Equipment delivered to Ashland or the Customer may be returned to the Vendor at the Vendor's sole cost and expense, for a full refund. In addition, Ashland shall have all rights and remedies available under Article 9 of the Commercial Law Article of the Maryland Code Annotated.

(b) For Convenience. Ashland may terminate the Agreement for convenience by providing the Vendor with written notice of such termination, and such termination shall be effective upon receipt of such notice by the Vendor, with the result that Ashland shall have no further obligations, including obligations to purchase from the Vendor. In the event of any such termination under this Section 8(b), Ashland shall pay the applicable portion of the Purchase Price for the Vendor's performance as of the date of such termination, subject to Ashland first receiving payment from the Customer as provided in Section 3(a), and in no event shall the Vendor be entitled to unabsorbed overhead or anticipatory profit.

9. Independent Contractor. The Vendor acknowledges and agrees that it is engaged in an independent business and will perform its obligations under the Agreement as an independent contractor and not as the agent or employee of Ashland or the Customer. The Vendor is not authorized to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of Ashland or bind Ashland in any manner. The Vendor acknowledges further that it shall be responsible for income taxes and/or self-employment taxes on any compensation received by the Vendor pursuant to the Agreement. The Vendor shall promptly pay when due all taxes levied or assessed, including, without limitation, any applicable sales, use, gross receipts, value added tax (VAT), or other similar taxes, as applicable. The Vendor further acknowledges neither the Vendor nor any of its employees is eligible to participate in any employee benefit plan sponsored by Ashland or the Customer.

10. Substitute Orders. If the Vendor is unable to supply any of the Equipment for any reason during the term of the Agreement, the Vendor agrees to provide substitute Equipment acceptable to Ashland at the prices, quantities, and terms set forth in the Agreement (unless the Vendor is able to obtain the substitute Equipment at more favorable prices and/or terms than those set forth in the Agreement, in which case the more favorable prices and/or terms will be made available to Ashland). If the Vendor does not provide substitute Equipment acceptable to Ashland, then the Vendor is obligated to pay the difference between the negotiated price for the Equipment and the actual price paid by Ashland and/or the Customer to obtain the substitute Equipment from a third party. All prices shall be inclusive of all taxes levied or assessed, including, without limitation, any applicable sales, use, gross receipts, value added tax (VAT), or other similar taxes, as applicable.

11. Other Sources. If the Vendor desires to acquire any Equipment from third-party sources, the Vendor may do so only from such third-party suppliers approved in advance, in writing, by Ashland in its sole and absolute discretion.

12. Insurance. The Vendor represents that it maintains insurance and shall cover third-party claims, and claims by Ashland and/or the Customer, and their respective affiliates,

employees and agents in connection with the Vendor's installation of the Equipment. Ashland shall be named an additional insured of such insurance and shall receive a certificate of insurance from the Vendor's insurance carrier confirming the following policies of insurance: commercial general liability with limits of not less than \$1,000,000 per occurrence; \$2,000,000 aggregate; \$500,000 completed operations; \$1,000,000 personal injury; \$100,000 fire damage, including bodily injury liability (including death) and property damage, all in broad form prior to the Vendor installing such Equipment. Each such policy must contain a cross liability clause and must not have any exclusion for work done by sub-contractors or sub-trades. The Vendor must also carry a workers compensation policy, inclusive of employer's liability, in a limit of at least \$500,000.

13. Notices. All notices required or permitted to be given or made by Ashland or the Vendor, shall be submitted in writing by telecopier, internationally known overnight courier service, or by certified or registered mail, charges or postage pre-paid, addressed to the respective parties and shall be addressed as follows and which shall be effective, in the case of overnight mail, the next business day, and if mailed, three (3) days after mailing:

If to Ashland:

Ashland Equipment a division of SINGER MD, LLC  
1324 Brass Mill Rd  
Belcamp, Maryland 21017  
Attn: Rod White, President  
Fax: (410) 273-1859

If to Vendor:

To the Vendor address  
as provided in the Agreement

14. Assignment. The Agreement, together with these Terms and Conditions, shall not be assigned, in whole or in part, without Ashland's prior written consent. Ashland may assign the Agreement, together with these Terms and Conditions, upon five (5) days' advance written notice to the Vendor.

15. Miscellaneous:

(a) Entire Agreement; Waiver, Modification or Amendment. The Agreement, together with these Terms and Conditions, constitute the entire agreement between Ashland and the Vendor and supersede any and all prior negotiations, understandings, and/or agreements, oral or written, between the parties hereto with respect to the subject matter hereof. Neither this Agreement, any related purchase agreements, nor any of their provisions may be waived, modified or amended except by an instrument in writing signed by the parties hereto.

(b) Governing Law; Jurisdiction; Venue. The Agreement, together with these Terms and Conditions, shall be governed by the laws of the state of Maryland, irrespective of its conflicts of laws provisions. All claims hereunder shall be tried solely and exclusively in the any of the District Courts or the Circuit Court for Baltimore County, Maryland (or if jurisdiction exists, in the United States District Court for the District of Maryland, Northern Division), and the parties consent to the jurisdiction and venue of such court, regardless of where any of the parties has its principal office at the time of such action. All matters hereunder shall be tried solely before a judge and not a jury, and THE PARTIES AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL IN ALL SUCH CASES. Any order entered in a Maryland court shall be enforceable

in any other state, regardless of that state's statutes, laws or case law, the same as if the enforcement thereof were brought in Maryland. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to actual reasonable attorney's fees and costs.

(c) Compliance; No Waiver. The failure of Ashland to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms nor shall it affect the right of Ashland to insist upon strict compliance herewith at any time thereafter. The failure of Ashland to terminate the Agreement upon the occurrence of an event of default by the Vendor in its performance of any obligation hereunder shall not constitute a waiver or otherwise affect the right of Ashland to terminate the Agreement as a result of a continuing or subsequent failure or refusal by the Vendor to comply with any of such obligations. The rights or remedies set forth herein are in addition to any other rights or remedies which may be granted by law.

(d) Severability. If any provision of this Agreement shall be contrary to the laws or jurisdiction in which the same shall be sought to be enforced, the illegality or unenforceability of any such provision shall not affect the other terms, covenants, terms or conditions hereof, and the remainder of this Agreement, or the application of such illegal or unenforceable term or provision to persons or circumstances other than those as to which this Agreement is held to be illegal or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to fullest extent permitted by law.

(e) Compliance With Laws. The Vender shall comply with all applicable federal, state and local laws and executive order and regulations issued pursuant thereto, including without limitation all laws relating to equal employment opportunity.

(f) Survival. All representations, warranties and conditions and indemnities (including but not limited to those set forth in Sections 5 and 7 of these Terms and Conditions) shall survive both delivery and acceptance of the Equipment and/or the completion of any Services as well as any termination of the Agreement.