

**VORTEX COMPANIES, LLC (AND SUBSIDIARIES)**  
**TERMS AND CONDITIONS OF SALE**

1. **Applicability.** These terms and conditions (these “**Terms**”) govern the sale of equipment (“**Equipment**”) or products (“**Materials**”), and collectively with the Equipment, the “**Goods**”) by Vortex Companies, LLC, a Delaware limited liability company and its subsidiaries (including Quadex, LLC, Schwalm USA, LLC, Vortex Technology Group, LLC and CIPP Corp., LLC) (collectively, “**Seller**”), to the customer identified in a quotation, proposal, purchase order, invoice, or similar document (“**Customer**”). The accompanying quotation, proposal, purchase order, invoice, or similar document (the “**Order**” and collectively with these Terms, the “**Agreement**”) and any license agreement between the parties 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. These Terms prevail over any of Customer’s general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms. These Terms are expressly made a part of the Order.
2. **Use of Equipment; Projects.** The Equipment shall only be used in accordance with Seller’s specifications. Upon Seller’s request, Customer shall provide the project name(s) and project owner(s) for which the Goods are used for the purposes of maintaining Seller’s rights as a supplier (including any applicable lien rights).
3. **Delivery.**
  - (a) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Seller’s facility (which location will be provided to Customer) (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Unless otherwise agreed to in writing by Seller, Customer shall take delivery of the Goods within seven (7) days of Seller’s notice that the Goods has been delivered to the Delivery Point. Customer shall be responsible for all loading costs.
  - (b) If for any reason Customer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Customer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Customer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
4. **Shipping Terms.** Unless otherwise set forth in an Order, delivery of the Goods shall be made FOB Delivery Point, and Customer shall be responsible for arranging shipping of the Goods from the Delivery Point to Customer’s facility at Customer’s sole cost, expense, and risk of loss. In no event shall Seller be liable for any delays, loss or damage in transit.
5. **Title and Risk of Loss.** Title to the Goods remains with Seller until the Price has fully been paid. Risk of loss passes to Customer upon delivery of the Goods at the Delivery Point (regardless of the shipping terms). As collateral security for the payment of the Price, Customer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.
6. **Price.**
  - (a) Customer shall purchase the Goods from Seller at the price (the “**Price**”) set forth in the Order.
  - (b) The Price is exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel or real or personal property or other assets
7. **Payment Terms.** Unless otherwise set forth in an Order, Customer shall pay the Price upon receipt of an invoice from Seller, without any set-off, offset, abatement or deduction whatsoever in US dollars by wire transfer or check. Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month and the highest rate permissible under applicable law, calculated daily and compounded

monthly. Customer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees (including in-house counsel fees) and costs of enforcing any applicable liens. Payment of any late charge does not excuse Customer of any default under the Agreement.

8. Limited Warranty.

(a) Seller warrants to Customer that for a period of one year from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will be free from material defects in material and workmanship.

(b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Equipment. Third-Party Products may also be required to operate or use the Equipment as intended. Third Party Products are not covered by the warranty in **Section 8(a)**, and Customer shall be responsible for any sums (including personnel expenses) expended by Seller due to or arising from the use or misuse of a Third Party Product. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the warranty set forth in **Section 8(a)** unless: (i) Customer gives written notice of the defect, reasonably described, to Seller within seven days of the time when Customer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine

such Goods and Customer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Customer's claim that the Goods are defective. The limited warranty above does not apply where the Goods have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller, or used with any Third-Party Product, hardware, software or product that has not been previously approved in writing by Seller.

(e) Subject to **Section 8(d)**, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Customer shall, at Seller's expense, return such Goods to Seller.

(f) **THE REMEDIES SET FORTH IN SECTION 8(e) SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8(a).**

(g) In addition to the requirements set forth in Section 8(d), in the event Customer submits a warranty claim for defective Materials, the following criteria must be met for the claim to be deemed valid: (i) the Materials were applied by an applicator trained by Seller on material sampling and testing; (ii) the Materials were stored and mixed in accordance with Seller specifications; (iii) a Seller certified laboratory was utilized for testing; (iv) no evidence of non-compliant samples or testing exists, and Customer must be able to provide the batch number of the Material. All third-party testing results shall be the property of Seller.

(h) Notwithstanding anything to the contrary, in the event Customer wishes to reject damaged freight, the following conditions must be met: (i) Customer must take photographic evidence of the alleged damage taken at the Delivery Point, (ii) Customer must make a note of such damage on bill of lading, (iii) Customer must email photographs to Seller (and shipper) within 24 hours of receipt, and (iv) a claim form (with repair estimates, if Equipment is damaged) must be filed within 30 days. Damaged freight may not be claimed if this process is not followed.

9. Returns. Returns of undamaged Goods are not authorized. All sales are final. Any returns of Goods is at the sole discretion of Seller, and Seller may impose restocking and other fees at its sole discretion.

10. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THE AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY TO CUSTOMER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED TWO TIMES THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD UNDER ANY ORDER.**

(c) The limitation of liability set forth in **Section 9(b)** above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

11. Insurance. During the term of the Agreement, upon request by Seller with respect to purchase of Equipment, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 per occurrence, with financially sound and reputable insurers. Upon Seller's request, Customer shall provide Seller with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in the Agreement. The certificate of insurance shall name Seller as an additional insured. Customer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

12. Term and Termination. The term of the Agreement commences on the date of the Agreement and continues for the period of time set forth in the Order, unless and until earlier terminated as provided under the Agreement (the "**Term**"). In addition to any remedies that may be provided in the Agreement, Seller may terminate the Agreement with immediate effect upon notice to the other party, if the other party: (i) fails to pay any amount when due under the Agreement; (ii) has not otherwise performed or complied with any of the terms of the Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

13. Training.

(a) Customer may be required to receive training services from Seller for the Equipment as described in the Order ("**Training Services**"). Seller shall use reasonable efforts to meet any performance dates specified in the Order, and any such dates shall be estimates only. Customer acknowledges that Seller makes no warranty regarding the results to be attained by utilizing the Training Services.

(b) Training Location and Equipment. Seller shall provide all Training Services at Customer's facilities as described in the Order or otherwise provided in writing. Customer shall provide all personnel, equipment, and materials necessary to provide the Training Services (except for Seller Personnel).

(c) Seller's Obligations. Seller shall appoint (i) a Seller employee to serve as a primary contact with respect to the Agreement and who will have the authority to act on behalf of Seller in connection with matters pertaining to the Agreement, and (ii) Seller personnel, who shall be suitably skilled, experienced and qualified to perform the Training Services (the "**Seller Personnel**").

(d) Training Costs and Expenses. Fees for the Training Services are set forth in the Order and are separate from the Price. The payment terms set forth in **Section 7** shall apply to the payment of fees and expenses for the Training Services as applicable.

(e) **NO WARRANTY. SELLER MAKES NO WARRANTY AS TO RESULTS TO BE ATTAINED BY ATTENDING TRAINING CLASSES OR USING TRAINING MATERIALS. TRAINING PROVIDER IS NOT RESPONSIBLE FOR THE PERFORMANCE OF ANY FIELD WORK AND IS NOT**

**A SUBCONTRACTOR OR OTHER PARTY UNDER ANY AGREEMENT BETWEEN CUSTOMER AND ANY PROJECT OWNER. CUSTOMER SHALL FULLY INDEMNIFY SELLER FOR ANY LOSS, CLAIM OR DAMAGE ARISING FROM THE TRAINING SERVICES IN ACCORDANCE WITH SECTION 13.**

14. Indemnification. Customer shall indemnify, defend (with counsel reasonably acceptable to Seller) and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, “**Indemnified Party**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees, fees and the costs of enforcing any right to indemnification under the Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party, relating to any claim of a third party or Seller arising out of or occurring in connection with the Goods, the Training Services or Customer’s negligence, willful misconduct or breach of the Agreement. Customer shall not enter into any settlement without Seller’s or Indemnified Party’s prior written consent.

15. Precautionary UCC-1 Financing Statement. Customer authorizes Seller to file precautionary Uniform Commercial Code (“UCC”) financing statements and other similar filings and recordings with respect to the Goods until the Price is fully paid. Customer agrees not to file any corrective or termination statements or partial releases with respect to any UCCs or other similar filings or recordings filed by Seller in connection with the Goods except (i) if Seller fails to file a corrective or termination statement or release on request from Customer after the expiration or earlier termination of the Agreement or (ii) with Seller’s consent.

16. Confidential Information. All non-public, confidential or proprietary information of Seller, including, but not limited to, technology, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain;

(b) known to Customer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

17. Force Majeure. Seller shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, named windstorm, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

18. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under the Agreement. Seller may at any time assign, transfer or subcontract any or all of its rights or obligations under the Agreement without Customer’s prior written consent. The Agreement is binding on and inures to the benefit of the Parties to the Agreement and their respective permitted successors and permitted assigns.

19. Compliance with Law. Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement.

20. Waiver. No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the 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.

22. No Third-Party Beneficiaries. The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

23. Governing Law. All matters arising out of or relating to the Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule.

24. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to the Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the City of Houston and County of Harris, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

25. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

26. Severability. If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. Entire Agreement. The Order and these Terms 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. All terms, conditions, and exclusions set forth in these Terms are

incorporated into the Order. In the event of any conflict between the terms of the Order and the Agreement, the terms of the Order shall control.

28. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement including, but not limited to, the following provisions: **Sections 8, 10, 11, 13, 14, 16, 23, 24,** and this **Section 28.**

29. Amendments. These Terms may be amended at any time by Seller upon notice to Customer. Seller may post any amendments to its website, and such amendments shall be binding on Customer.

30. Cumulative Remedies. All rights and remedies provided in the Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.