

CONGER INDUSTRIES INC. (“Conger”)

Terms and Conditions of Service

1. **GENERAL** – These Terms and Conditions (the “Terms”) shall apply to and govern all services (the “Services”) provided by Conger to you (“Buyer”) under the attached Preventative Maintenance Agreement or other written proposal or quotation, which, together with these Terms, shall constitute the entire agreement between Conger and Buyer (the “Contract”). The provision of the Services is expressly conditioned upon Buyer’s acceptance of these Terms, which acceptance may be express or implied. Buyer’s full or partial payment or receipt and acceptance of the Services shall constitute acceptance of these Terms. CONGER EXPRESSLY OBJECTS TO, AND IS NOT BOUND BY, ANY TERMS OR CONDITIONS ON BUYER’S ORDER, CONFIRMATION FORMS OR OTHER DOCUMENTS, WHICH ATTEMPT TO IMPOSE UPON CONGER TERMS AND CONDITIONS WHICH DIFFER FROM CONGER’S TERMS SET FORTH HEREIN; AND CONGER’S PERFORMANCE OR FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY BUYER COMMUNICATION SHALL NOT BE DEEMED TO WAIVE ANY PROVISION HEREIN, OR CONSTITUTE ASSENT TO ANY SUCH ADDITIONAL, DIFFERENT AND/OR INCONSISTENT TERMS. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry.

2. **PAYMENT** - Unless otherwise agreed by Conger in writing, Buyer agrees to make full payment within ten (10) days of the date of Conger’s invoice, in U.S. Dollars. Outstanding balances not paid when due are subject to late charges accruing from the invoice date at the rate of 1.5 percent per month. Conger’s receipt of any payment less than the full amount due shall not waive any rights of Conger. Conger may set off any amount due from Buyer, whether or not under this Contract, against any amount due Buyer hereunder. All costs and expenses, including but not limited to collection fees and reasonable attorney’s fees for the collection of any overdue amount due Conger, shall be paid by Buyer.

3. **PRICES** - Prices quoted by Conger in writing are firm for thirty (30) days, and are subject to change without notice thereafter. Unless expressly stated to the contrary, prices for the Services covered by Buyer’s order are exclusive of federal, state or other sales, use or similar taxes due and payable by reason of this sale. Such taxes shall be the responsibility of Buyer and may be added to the invoice as a separate item, or may be separately invoiced.

4. **CANCELLATION/DEFERRED PERFORMANCE** – If Buyer defaults in any payment when due, or if Buyer becomes the subject of any bankruptcy or insolvency proceeding, or whenever, in Conger’s discretion, there is doubt as to Buyer’s financial stability, Conger may, in its discretion and without prejudice as to its other lawful remedies, cancel or defer performance and/or demand immediate payment of all of Buyer’s outstanding invoices or account balances (plus any additional costs, expenses, losses or damages, including without limitation, lost profits, incurred by it as a result of such cancellation, delay, default or bankruptcy). Conger may also decline to perform Services under any accepted order, except for cash, and condition future performance against payment of cash in advance. Contracts may not be canceled or deferred by Buyer unless agreed in advance in writing by Conger.

5. **RESPONSIBILITIES OF BUYER** - Buyer shall be responsible for taking any and all measures necessary to provide Conger with a safe and suitable work environment, including, without limitation, any safety precautions reasonably requested by Conger prior to the provision of the Services. Buyer acknowledges that a safe work environment is necessary for the performance of the Services and that Conger may, at Conger’s sole discretion, refuse to perform the Services in a work environment that it reasonably determines to be unsafe or unsuitable. Buyer further acknowledges that certain aspects of the Services may require cooperation and coordination with Buyer personnel. As such, Buyer agrees to make available, as reasonably necessary, the resources and personnel required to complete the Services. Buyer shall use commercially reasonable efforts to ensure timely completion of the items described in this Section 4. Conger shall not be liable for any delay in the completion of the Services resulting from Buyer’s failure to provide a suitable work environment or inability to provide the resources and/or personnel necessary to complete the Services in a timely manner.

6. **INSPECTION AND ACCEPTANCE OF SERVICES** - Buyer will have three (3) days after performance of the Services to inspect same and to provide written notice to Conger of any defects in the Services. If Buyer does not notify Conger during this period, the Services shall be deemed accepted by Buyer and it is expressly agreed that Buyer shall have waived all claims based on any defects that were or would have been discovered upon reasonable inspection during this period. Such acceptance shall be deemed to have been made with knowledge of any defects that such an inspection reasonably would have revealed.

7. **EXCLUSIVE LIMITED WARRANTY** – Conger represents and warrants to Buyer that it shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Conger’s sole obligation for Services which do not comply with this limited warranty shall be, at Conger’s sole discretion, to: (i) re-perform the Services; or (ii) issue to Buyer a refund of fees paid. CONGER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER WITH RESPECT TO THE SERVICES PERFORMED BY CONGER, INCLUDING ANY OBLIGATIONS OR LIABILITY ARISING OUT OF CONGER’S NEGLIGENCE OR FAULT AND INCLUDING ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

8. **LIMITATION OF LIABILITY** - IN NO EVENT SHALL CONGER BE LIABLE TO BUYER OR ANYONE CLAIMING THROUGH OR UNDER BUYER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OF

ANY NATURE, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, INCLUDING, WITHOUT LIMITATION, DELAY, LOST REVENUE, LOST PROFITS OR LOSS OF GOODWILL, EVEN IF CONGER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Buyer’s aggregate recover from Conger for any claim other than those excluded herein shall not exceed the purchase price/fees paid by Buyer for the Services giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise. IF FOR ANY REASON, THE FOREGOING LIMITATION ARE FOUND BY A COURT OR ARBITRATION PANEL TO BE INVALID OR INAPPLICABLE UNDER ANY APPLICABLE STATE OR FEDERAL LAW, BUYER AGREES THAT CONGER’S TOTAL LIABILITY FOR ALL LOSSES (AS DEFINED BELOW) OF ANY KIND OR NATURE SHALL BE LIMITED TO ACTUAL DAMAGES WITHOUT REGARD TO ANY PUNITIVE OR EXEMPLARY DAMAGES PROVIDED BY ANY APPLICABLE LAW.

9. **FORCE MAJEURE** - Conger shall not be liable to Buyer or third parties for any delay in, or failure of, performance caused by acts or circumstances beyond its direct control, including but not limited to acts of God, fire, flood, explosion, war, governmental action, terrorist threats or acts, civil unrest, major equipment failure, accident, labor disputes, strikes, non-performance by a third party, shortage or inability to obtain materials, equipment, power or transportation. If delay is caused by any such circumstances, Conger shall have the option to cancel all or any portion of this Contract and/or extend any date upon which performance hereunder is due, without liability to either party.

10. **INTELLECTUAL PROPERTY** - Buyer hereby acknowledges that Conger has all right, title and interest in and to, and is the sole and exclusive owner of (or has to its knowledge otherwise lawfully and validly obtained the right to use and employ, whether by license or otherwise) all designs, drawings, specifications, calculations, flow charts, reports and other confidential information, and all other documents, work product and other materials that are delivered to Buyer under the Contract, or prepared by or on behalf of Conger in the course of performing the Services (the “Deliverables”), as well as all underlying proprietary rights, including, without limitation, trademarks, “know-how,” trade secrets, copyrights and technology. Conger grants to Buyer the right to use and copy any Deliverables as necessary to carry out the intent of the Contract. Buyer acknowledges that Conger may make any use of such Deliverables as Conger determines in its sole discretion, without compensation to Buyer.

11. **INDEMNIFICATION** – To the maximum extent allowed by law, Buyer shall defend and indemnify Conger and its officers, directors, employees, agents, representatives, successors and assigns from and against any claim, loss, liability, damage, deficiency, suit, action, demand, judgment, penalty, fine, cost or expense (including, but not limited to, attorney’s fees) (collectively, “Losses”) that Conger may incur or be obligated to pay as a result of: (i) performance of the Services at Buyer’s facility; (ii) Buyer’s use of any part or product, including without limitation, any third party claims for personal injury or property damage resulting from Buyer’s negligence or willful misconduct; (iii) any negligence or willful misconduct of, or violation of any applicable laws or regulations by, Buyer or its employees, agents or representatives; or (iv) Buyer’s breach of any term, covenant, representation or warranty contained in this Contract; provided, that Buyer shall not be liable for any such Losses resulting from the gross negligence or willful misconduct of Conger. Conger’s remedies under these Terms are cumulative and in addition to any other remedies available at law, in equity, by contract or otherwise. No purported limitation on Conger’s remedies contained in any other Buyer form or document shall operate to reduce this indemnification obligation. If any claim is asserted or action commenced against Conger for which Conger is entitled to indemnification hereunder, Buyer shall, upon Conger’s demand, promptly undertake the defense thereof, employing counsel satisfactory to Conger or agrees that Conger may elect to defend the same on its own behalf. In either case, Buyer will, upon demand, pay all reasonable attorneys’ fees and other costs or expense incurred by Conger in connection with such defense, including, but not limited to, any judgment or award resulting from any such claim or action and any settlement paid by Conger with Buyer’s consent.

12. **ASSIGNMENT** – Buyer may not assign any of its rights, duties or obligations under any Contract or invoice without Conger’s prior written consent. Any attempted assignment without such consent, even if by operation of law, shall be void.

13. **GOVERNING LAW; VENUE** – All transactions between Conger and Buyer shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to any conflicts of law principles. Any action or proceeding involving any dispute relating to or arising from these Terms or such transactions shall be commenced exclusively in the federal or state courts located within Brown County, Wisconsin, and the Buyer consents to the exclusive jurisdiction of such courts and waives any objection to such jurisdiction.

14. **WAIVER; SEVERABILITY** – The failure of Conger, at any time, to assert any right or require performance of any obligation contained in this Contract will not affect Conger’s right to assert such right or to require such performance at any time thereafter; nor shall the waiver be construed in any way as a waiver of any future breach of the provision so waived or waiver of the provision itself. These Terms confer no rights on third parties. In the event that any provision of this Contract is found invalid or unenforceable, whether in whole or in part, for any reason, such provision shall be changed and interpreted so as to best accomplish the objectives of such provisions within the limits of applicable law or applicable court decisions.

15. **ENTIRE AGREEMENT** – The Contract, including these Terms, constitute and represent the complete and entire agreement between Conger and Buyer and supersede all previous communications and representations, either written or verbal, with respect to the Services. The provisions of, and respective obligations of Conger and Buyer under Sections 7, 8, 10, 11 and 13, above, shall survive any termination of this Contract or any of the parties’ other obligations hereunder. No modification of these terms and conditions shall be binding on the Conger unless made in writing in accordance with the terms of these terms and conditions.