



## STEMCO Products Inc. Mobile Application End User Agreement

Last Updated: March 1, 2023

This Mobile Application End User Agreement (“**Agreement**”) is a binding agreement between you (“**Licensee**”) and STEMCO Products Inc. (“**Licensor**”). This Agreement governs Licensee’s use of Licensor’s mobile application (“**Application**”), which includes (i) all related software components, (ii) any printed materials and/or online or electronic help files and operating manuals about the Application (“**Documentation**”), and (iii) any information or databases that may be accessible via the Application.

BY DOWNLOADING, INSTALLING, OR USING THE APPLICATION, LICENSEE HEREBY REPRESENTS THAT LICENSEE IS AT LEAST EIGHTEEN (18) YEARS OF AGE OR OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT AND HAS READ, UNDERSTANDS, AND ACCEPTS, AND IS LEGALLY BOUND BY, THIS AGREEMENT. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSEE MUST NOT DOWNLOAD, INSTALL, OR USE THE APPLICATION AND MUST DELETE IT FROM LICENSEE’S MOBILE DEVICE.

### 1 License Rights and Restrictions

**1.1 License Grant.** Subject to Licensee’s compliance with the terms and conditions of this Agreement, Licensor hereby grants to Licensee a limited, non-exclusive, non-transferable and non-sublicensable right to (i) download, install, and use the Application for Licensee’s personal, non-commercial use on a mobile device owned, leased, or otherwise controlled by Licensee (“**Mobile Device**”) strictly in accordance with the Documentation, and (ii) access, stream, download, and use on such Mobile Device the Content and Services (as defined in Section 1.4 of this Agreement) made available in or otherwise accessible through the Application, strictly in accordance with this Agreement. The foregoing constitutes a license, not a sale, of the Application. All rights not expressly granted to Licensee herein are reserved to Licensor, and Licensee does not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Licensee hereby acknowledges and agrees that Licensee is solely responsible and liable for any use of the Application that occurs on the Mobile Device, including whether such use is by Licensee or by any third party (“**Third Party User**”) whatsoever, regardless of whether Licensee grants such Third Party User authorization or permission to use the Application. For the avoidance of doubt, this Agreement applies to each Mobile Device that downloads, installs, or uses the Application and regardless of whether the Application is downloaded, installed, or used on multiple Mobile Devices.

**1.2 License Restrictions.** Unless otherwise provided for in this Agreement, Licensee shall not, and shall ensure any Third Party User does not, undertake, facilitate, or otherwise engage in any of the following: (i) copy the Application, in whole or in part, (ii) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any Application, (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the

Application to any third party, (iv) reverse engineer, disassemble, decompile, decode, or adapt the Application, or attempt to derive or gain access to the source code of the Application, in whole or in part, (v) bypass or breach any security device or protection used for or contained in the Application, (vi) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of any Documentation, warranties, disclaimers, or copyright notice or other proprietary rights notices or other symbols, notices, marks, or serial numbers on or relating to any copy of the Application, (vii) use the Application in any manner or for any purpose that infringes, misappropriates, or otherwise violates any right or privilege (including an intellectual property right or privacy right) of any person, or that violates any applicable federal, state, local, foreign, or international law, statute, or regulation, or any judicial or administrative order, rule, or judgment, (viii) use the Application for purposes of benchmarking or competitive analysis of the Application, developing, using, or providing a competing Application product or service; or, any other purpose that is to Licensor’s detriment or commercial disadvantage, (ix) use the Application on any device or equipment not permitted by the Documentation, or (x) access or use the Application in any manner that is inconsistent with the terms of this Agreement.

**1.3 Third Party Application; Open Source Licenses.** The Application may include Application components that are provided by a third party (“**Third Party Application**”) or that are subject to an open source license agreement, including components available under the GNU Affero General Public License, GNU General Public License, GNU Lesser General Public License, Mozilla Public License, Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative (each individually, or collectively, referred to as “**Open Source Components**”). Any use of Third Party Application or Open Source Components by Licensee shall be solely governed by the terms and conditions of the applicable Third Party Application license or open source license(s) and not by the terms of this Agreement. When appropriate, the



applicable licenses shall be set forth in the readme or about files of the Application or otherwise made available by Licensor.

**1.4 Content and Services.** The Application may provide Licensee with access to Licensor's website located at <https://www.stemco.com> (the "**Licensor Website**") and products and services accessible thereon, and certain features, functionality, and content accessible on or through the Application may be hosted on the Licensor Website (collectively, "**Content and Services**"). Licensee's access to and use of such Content and Services are governed by any additional terms of use and privacy statement located on the Licensor Website, and any violation of such terms of use or privacy statement will also be deemed a violation of this Agreement. The Content and Services are based in the United States and provided for access and use only by persons located in the United States, Canada and Australia ("**Permitted Locations**"). Licensee acknowledges and agrees that Licensee may not be able to access all or some of the Content and Services outside of the Permitted Locations and that access thereto may not be legal by certain persons or in certain countries. If Licensee accesses the Content and Services from outside the Permitted Locations, Licensee is responsible for compliance with local laws.

**1.5 Prohibited Uses.** Licensee may use the Application only for lawful purposes and in accordance with the terms of this Agreement. Licensee agree not to use the Application: (i) for the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content or asking them for personally identifiable information, (ii) to send, knowingly receive, upload, download, use, or re-use any material that does not comply with the Content Standards set out in this Agreement, (iii) to transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam," or any other similar solicitation, (iv) to impersonate or attempt to impersonate the Licensor, any Licensor employee, another user of the Application, or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing), and (v) to engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Application, or which, as determined by us, may harm the Licensor or users of the Application, or expose them to liability. Additionally, Licensee agrees not to: (vi) use the Application in any manner that could disable, overburden, damage, or impair the Application or interfere with any other party's use of the Application, including their ability to engage in real-time activities through the Application, (vii) use any robot, spider, or other automatic device, process, or means to access the Application for any purpose, including monitoring or copying any of the material on the Application, (viii) use any manual process to monitor or copy any of the material on the Application, or for any other purpose not expressly authorized in this Agreement, without

our prior written consent, (ix) use any device, software, or routine that interferes with the proper working of the Application, (x) introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful, (xi) attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Application, the server on which the Application is stored, or any server, computer, or database connected to the Application, (xii) attack the Application via a denial-of-service attack or a distributed denial-of-service attack, and (xiii) otherwise attempt to interfere with the proper working of the Application.

## 2 Term and Termination

**2.1 Term.** The term of this Agreement commences the earlier of when Licensee (i) downloads or installs the Application or (ii) otherwise acknowledges acceptance of this Agreement, and the term of this Agreement will continue in effect until terminated by Licensee or Licensor in accordance with the terms and conditions herein. Licensee may terminate this Agreement at any time by notifying Licensor in writing of the same and by deleting the Application and all copies thereof from the Mobile Device. Licensor may terminate this Agreement at any time and with or without notice to Licensee. In addition, this Agreement will terminate immediately and automatically without any notice to Licensee if Licensee violates any of the terms and conditions of this Agreement.

**2.2 Effect of Termination.** In the event this Agreement terminates for any reason, the licenses granted hereunder shall terminate and Licensee shall immediately (i) remove the Application from the Mobile Device, (ii) destroy all copies of the Application in Licensee's possession, custody, or control, and (iii) thereafter cease all access and use of the Application by Licensee and any Third Party User. Termination or expiration of this Agreement shall be without prejudice to any other right or remedy to which Licensor may be entitled under this Agreement or applicable law. Termination or expiration of this Agreement shall not relieve Licensee from its obligations which survive termination or expiration of this Agreement.

## 3 Security and Compliance

**3.1 Licensor Security Features.** The Application may contain technological measures designed to monitor the Application and prevent unauthorized or illegal use of the Application. Licensee acknowledges and agrees that: (i) Licensor may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and to enforce Licensor's rights in and to the Application, (ii) Licensor may deny Licensee or any Third Party User access to and/or use of the Application if Licensor, in its sole and reasonable discretion, believes that the Licensee or Third Party User's use of the Application does or will violate any



provision of this Agreement, and (iii) Licensor (or a third party acting on its behalf) may collect, maintain, process and use diagnostic, technical, usage and related information, including information about the Mobile Device, that Licensor may gather or that may be transmitted to Licensor from the Application in order for Licensor to support the Application, to verify the proper use of the Application, to improve the Application generally, to create new products and services, or for any other lawful business purposes. Licensee grants to Licensor, and to third parties acting on behalf of Licensor, the right to audit or examine Licensee's Mobile Device to verify compliance with this Agreement; provided, however, that Licensor provides Licensee at least thirty (30) business days' written notice of the foregoing.

**3.2 Licensee Security Obligations.** Licensee is solely responsible for all use of the Application that occurs on the Mobile Device and for maintaining the security and confidentiality of all usernames, passwords, and other data provided to the Application by Licensee or generated by the Application for Licensee. Licensee agrees to notify Licensor immediately of any unauthorized use of any username, password, or account related to the Application, or of any other known or suspected breach of security.

#### **4 Application Support**

**4.1 Updates and Upgrades.** Licensor may, from time to time and in its sole discretion, develop and provide Application updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality of the Application. Licensee agrees that Licensor has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on the Mobile Device settings, when the Mobile Device is connected to the internet either: (i) the Application will automatically download and install all available Updates, or (ii) Licensee may receive notice of, and be prompted to download and install, available Updates. Licensee shall promptly download and install all Updates, and it acknowledges and agrees that the Application or portions thereof may not properly operate should Licensee fail to do so. Licensee further agrees that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

**4.2 Support Services.** Licensor has no obligation to provide Licensee with technical or other support services related to the Application ("**Support Services**"). IN THE EVENT LICENSOR, IN ITS SOLE DISCRETION, DECIDES TO PROVIDE SUPPORT SERVICES TO LICENSEE, LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT ANY SUCH SUPPORT SERVICES ARE PROVIDED, OR OTHERWISE FURNISHED, TO

LICENSEE AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. In providing the Support Services described herein, Licensor may be required to access, perform operations on and/or in, and transmit information and data to, Licensee's Mobile Device, and Licensee hereby acknowledges and consents to Licensor undertaking, in Licensor's sole and reasonable discretion, all of the foregoing to perform the Support Services, and Licensee represents and warrants to Licensor that Licensee has the legal authority to consent to the same, and has procured the consent from any other applicable third party to allow Licensee to perform the Support Services. Licensee acknowledges and agrees that any Support Services may result in damage or loss to the Mobile Device and Licensee hereby releases and agrees to hold Licensor harmless from any liability arising in connection with the Support Services and agrees that Licensee will not assert or maintain against Licensor any claim, action, suit, or demand of any kind or nature whatsoever arising from the Support Services.

**5 Fees.** To the extent any license fees or payment terms are applicable to the Application, such fees and terms shall be set forth in a separate order form or otherwise require Licensee's affirmative consent. For purposes of clarity, Licensee shall, at all times, comply with the terms and conditions of this Agreement, including in the event Licensee is using a "free of charge" version of the Application or is not otherwise subject to any license fees or payment terms.

#### **6 Confidentiality; Privacy; Feedback**

**6.1 Confidential Information.** Licensee acknowledges that during the term of this Agreement it may receive, have access to, or become aware of trade secrets, proprietary information, or other confidential information of Licensor, including information or data related to the Application ("**Confidential Information**"). Licensee shall implement and maintain reasonable security measures to safeguard and protect the secrecy and confidentiality of all such Confidential Information, whether or not identified or marked as confidential at the time of its disclosure, and not to disclose any Confidential Information to any third party. Notwithstanding the foregoing, the confidentiality obligations set forth herein shall not apply when, and to the extent that, Confidential Information: (i) is part of the public domain through no action or failure to act by Licensee, (ii) is made available to the general public by Licensor or a third party who is lawfully in possession of such information, not as a result of any action or failure to act on the part of Licensee, (iii) was previously known to Licensee free of any obligation to keep it confidential, (iv) is subsequently disclosed to Licensee free of any obligation to keep it confidential, or (v) is independently developed by Licensee or a third party other than in breach of this Agreement.

**6.2 Data Privacy.** Licensee agrees that any personally identifying information provided to Licensor, including any Third Party User's personally identifying information, shall be collected and used in accordance with the Licensor Mobile Application Privacy Statement, which is accessible at: [PLACEHOLDER]. Licensee represents to Licensor that Licensee and each Third Party User has the full authority to provide any such personally identifying information to Licensor, and Licensor will notify each applicable Third Party User of the foregoing.

**6.3 Communications.** Licensee hereby agrees that the Application contains features designed to notify and contact Licensee and that Licensor may contact Licensee using any personally identifiable information it provides to Licensor, including via Licensee's mobile telephone number. Licensee further agrees that Licensor may use the Application or other means to send Licensee text messages to its mobile telephone number, such as messages and alerts related to Licensor's products, events, and/or promotions. By providing Licensor with Licensee's mobile telephone number, Licensee (i) expressly represents that Licensee is the owner of, and has the authority to provide, the mobile telephone number to Licensor, and (ii) consents to receive automated marketing text messages at the mobile telephone number so provided. Licensee further acknowledges that Licensee's consent to receive automated marketing text messages from Licensor is not, in any form or manner, contingent upon, or required to make, a purchase for goods or services or required to use the Application. Standard text/SMS message and data rates will apply. Licensee can opt out from text marketing communications by texting STOP to the SMS number used to contact Licensee or by contacting Licensor directly in accordance with Section 10.5 (Notices) of this Agreement. Licensor may share Licensee's mobile phone number with service providers to assist with the delivery of such messages. Without limiting any of the foregoing, Licensee hereby agrees that Licensee will immediately and without delay (and within seventy-two (72) hours) notify Licensor in the event Licensee no longer is the owner of any mobile telephone number provided to Licensor or no longer has the authority to use any such mobile telephone number to receive text messages.

**6.4 Feedback.** Licensee may, from time to time, but is under no obligation to, provide Licensor with ideas, suggestions, or proposals ("**Feedback**") concerning the Application. In the event Licensee provides such Feedback to Licensor, Licensee shall grant Licensor a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, or publicly perform the Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. Licensee agrees that, in addition to the rights afforded to Licensor under this Agreement, Licensor may use, compile, and monitor statistical information based

on information gathered or transmitted to Licensor via the Application, including to verify the proper use of the Application, to improve the Application generally, for the creation of new products and services, and for other business purposes. Licensee represents to Licensor that Licensee has the full authority to provide any such Feedback to Licensor.

## 7 Intellectual Property and Application Standards

**7.1 Intellectual Property.** Licensor owns and retains all rights, interests, and licenses to the Application, and Licensee does not acquire any ownership interest in the Application or the Documentation whatsoever. Licensee shall, during the term of this Agreement and at its own cost and expense (i) undertake all commercially reasonable measures to safeguard the Application (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access, (ii) take all such steps as Licensor may reasonably require to assist Licensor in maintaining the validity, enforceability, and Licensor's ownership, of the intellectual property rights in the Application, (iii) promptly notify Licensor in writing if Licensee becomes aware of any actual or suspected infringement, misappropriation or other violation of Licensor's intellectual property rights in or relating to the Application, (iv) promptly notify Licensor in writing if Licensee becomes aware of any claim that the Application, including any production, use, marketing, sale or other disposition of the Application, in whole or in part, infringes, misappropriates or otherwise violates the intellectual property rights or other rights of any third party, and (v) at Licensor's sole expense, fully cooperate with and assist Licensor in all reasonable ways in the conduct of any legal action by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any legal actions relating to, the Application.

**7.2 User Contributions.** The Application may contain message boards, chat rooms, personal web pages or profiles, forums, bulletin boards, and other interactive features (collectively, "**Interactive Services**") that allow users to post, submit, publish, display, or transmit to other users or other persons (hereinafter, "**post**") content or materials (collectively, "**User Contributions**") on or through the Application. All User Contributions must comply with the Content Standards set out in this Agreement. Any User Contribution you post will be considered non-confidential and non-proprietary. By posting any User Contribution on the Application, you grant us and our affiliates and service providers, and each of their and our respective licensees, successors, and assigns, the right to use, reproduce, modify, perform, display, distribute, and otherwise disclose to third parties any such material for any purpose whatsoever. You represent and warrant that you own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our affiliates and service



providers, and each of their and our respective licensees, successors, and assigns, and all of your User Contributions do and will comply with this Agreement. You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not the Licensor, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the Application.

**7.3 Content Standards.** This section constitutes the (“Content Standards”) that apply to any and all User Contributions and use of Interactive Services. User Contributions must in their entirety comply with all applicable federal, state, local, and international laws and regulations. Without limiting the foregoing, User Contributions must not: (i) contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable, (ii) promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age, (iii) infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person, (iv) violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with this Agreement or our Privacy Policy, (v) be likely to deceive any person, (vi) promote any illegal activity, or advocate, promote, or assist any unlawful act, (vii) cause annoyance, inconvenience, or needless anxiety or be likely to upset, embarrass, alarm, or annoy any other person, (viii) impersonate any person, or misrepresent your identity or affiliation with any person or organization, (ix) involve commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter, or advertising, or (x) give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

**7.4. Monitoring and Enforcement.** We have the right to remove or refuse to post any User Contributions for any or no reason in our sole discretion, and to take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates the terms of this Agreement, including the Content Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Application or the public, or could create liability for the Licensor. You acknowledge and agree that we have the right to disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy, and take appropriate legal action, including, without limitation, referral to law enforcement, for any illegal or unauthorized use of the

Application. We have the absolute right to terminate or suspend your access to all or part of the Application for any or no reason whatsoever, including without limitation, any violation of this Agreement. Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Application. YOU WAIVE AND HOLD HARMLESS THE LICENSOR AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY THE LICENSOR AND ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER THE LICENSOR AND SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES. However, we cannot, and do not undertake to, review material before it is posted on the Application, and we cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

**8 DISCLAIMERS AND LIABILITY.** LICENSEE ACKNOWLEDGES AND AGREES THAT THE APPLICATION IS PROVIDED “AS IS,” “AS AVAILABLE,” AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY DISCLAIMED. LICENSEE ACKNOWLEDGES AND AGREES THAT THE APPLICATION MAY NOT MEET LICENSEE’S REQUIREMENTS, THAT THE OPERATION OF THE APPLICATION AND/OR USE OF APPLICATION MAY BE INTERRUPTED, THAT ANY ERRORS MAY REMAIN UNCORRECTED, AND THAT THE APPLICATION MAY NOT BE COMPATIBLE WITH CERTAIN INFORMATION SYSTEMS. LICENSOR IS NOT RESPONSIBLE FOR ANY SOFTWARE INSTALLED OR USED BY LICENSEE OR THIRD PARTY USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL, SPECIAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, TRANSMISSION OF MALICIOUS PROGRAMS OR CODE, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING FROM OR RELATED TO LICENSEE’S USE OR INABILITY TO USE THE APPLICATION (INCLUDING ANY SUPPORT SERVICES), REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR



OTHERWISE) AND EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL LICENSOR'S TOTAL LIABILITY TO LICENSEE FOR ANY AND ALL DAMAGES EXCEED THE LESSER OF (I) THE AMOUNT OF THE LICENSE FEES PAID FOR THE APPLICATION OR (II) \$100.00. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF A REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. ANY AND ALL CAUSES OF ACTION OR CLAIMS LICENSEE MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR TO THE APPLICATION MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

**9 Indemnification.** Licensee shall indemnify, defend and hold harmless Licensor and its affiliates, employees, agents, officers, directors, shareholders, representatives, successors and assigns from and against any loss, liability, cause of action, cost or expense (including reasonable attorneys' fees) arising from, in connection with or related to: (i) any breach of this Agreement by Licensee, any employee or agent of Licensee, or any Third Party User, (ii) the acts and omissions of Licensee and its employees and agents, and any Third Party User, in connection with its/their use of the Application, and (iii) the violation, infringement or misappropriation by Licensee or any employee or agent of Licensee, of the intellectual property rights of Licensor.

## 10 Miscellaneous

**10.1 Amendments.** Licensor reserves the right to change or modify this Agreement by providing written notice of any changes to Licensee. Licensor reserves the right to change, edit, delete, or revise this Agreement at any time, and such changes will (i) be effectively immediately, (ii) be applied prospectively, and (iii) apply to all similarly situated licensees of the Application. Licensor will notify Licensee of any changes or modifications by posting the modified Agreement in the Application or on the Licensor Website and indicating the date on which the Agreement was last updated. If any changes to this Agreement are unacceptable to Licensee, Licensee may terminate this Agreement upon written notice of termination to Licensor. Continued use of the Application following the effective date of any changes to the Agreement constitutes Licensee's acceptance of the changes. This Agreement may not be amended by any pre-printed terms or conditions of Licensee's purchase order.

**10.2 Export Controls.** Licensee shall comply with all federal, state, local and foreign laws, regulations, rules and ordinances pertaining to the operations and conduct of its business and the license granted to Licensee under this Agreement. Licensee may not use or otherwise export or re-export the Application except as authorized by United States

law and the laws of the jurisdiction in which the Application was obtained. In particular, but without limitation, the Application may not be exported or re-exported (i) into any U.S. embargoed countries or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List.

### 10.3 Governing Law; Disputes; Class Action Waiver.

This Agreement shall be governed by the laws of the State of Texas, excluding its conflicts of law rules. The County of Harrison, State of Texas or the United States District Court for the Eastern District of Texas will have exclusive jurisdiction of any legal action arising out of this Agreement, and each party irrevocably submits to the exclusive jurisdiction of such courts. The parties expressly disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Licensee acknowledges that Licensor has invested significant resources and expense in the development of the Application and that violations of the terms of this Agreement could cause irreparable harm to Licensor. Accordingly, Licensor shall have the right to seek immediate injunctive relief without the necessity of posting bond in the event of Licensee's breach or threatened breach of any confidentiality obligation, or in the event of Licensee's infringement or misappropriation of Licensor's intellectual property rights. LICENSEE AGREES THAT IF ANY DISPUTE SHOULD ARISE BETWEEN LICENSEE AND LICENSOR, LICENSEE WILL BRING ITS CLAIM ON AN INDIVIDUAL BASIS AND LICENSEE EXPRESSLY AND UNEQUIVOCALLY WAIVES ITS RIGHT TO PURSUE ANY CLAIM IN A CLASS ACTION.

**10.4 Notice to Government End-Users.** The Application, including any Documentation, is provided to the United States Government with RESTRICTED RIGHTS. The Licensed Application is a "commercial item" developed exclusively at private expense, consisting of "commercial computer Application" and "commercial computer Application documentation" as such terms are defined or used in the applicable U.S. Federal Acquisition Regulations. The Application is licensed hereunder only as a commercial item and with only those rights as are granted to all other customers pursuant to the terms and conditions of this Agreement. Nothing in this Agreement requires Licensor to produce or furnish technical data for or to Licensee. The Application provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial rights and restrictions described elsewhere herein. The Application is classified as "restricted computer Application" and provided to the U.S. Government with RESTRICTED RIGHTS, as provided under applicable federal acquisition laws and regulations.

**10.5 Notices.** All notices and demands hereunder shall be in writing and shall be served by personal service or by mail



at the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such party by written notice to the other party). All notices or demands by mail shall be by certified or registered mail, return receipt requested, or by a nationally-recognized private express courier and shall be deemed complete upon receipt. Should Licensee have any questions concerning this Agreement, or if it desires to contact Licensor for any reason, it must write to the following: Enpro Industries, Inc, ATTN: Stemco Legal Department, 5605 Carnegie Blvd., Suite 500, Charlotte, North Carolina, 28209 USA. Notwithstanding the foregoing, Licensee hereby acknowledges and agrees that Licensor is permitted to provide all notices to Licensee through the Application and such notice shall be deemed delivered and accepted by Licensee immediately upon posting in the Application.

**10.6 Assignment/Subcontractors.** Licensee may not assign, delegate or transfer the Agreement, in whole or in part, or any of its rights or duties hereunder, including by merger (regardless of whether Licensee is the surviving entity) or acquisition, without the prior written consent of Licensor. Licensor may assign or transfer the Agreement, in whole or in part, to any third party without the prior written consent of Licensee. Subject to the foregoing, the Agreement shall be

binding upon, and shall inure to the benefit of, the parties and their respective successors or permitted assigns. Licensor may contract with third parties and suppliers to provide certain portions of the Application and/or support services thereto, and references to Licensor necessarily include any such third parties and suppliers.

**10.7 Miscellaneous.** In the event that any term of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction or any federal or state government agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect. A waiver of any provision of this Agreement shall only be effective if in a writing signed by the party against which the waiver is claimed. This Agreement may not be assigned by Licensee without the prior written consent of Licensor.

**10.8 Entire Agreement.** This Agreement, including each additional contract, term or policy incorporated herein by reference, represents the entire agreement between Licensee and Licensor relating to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the subject matter of this Agreement.

\* \* \* \* \*