

## TERMS & CONDITIONS

These Terms & Conditions (the “**Terms**”) are between VMI, LLC (“**VMI**”) and the person or organization agreeing to these Terms (the “**User**”) as a participant in the VMI Marketplace. By accepting these Terms, signing an Order or using the Site, User understands and acknowledges that (a) the User is of legal age and have the authority to bind the User to the Order and these Terms and (b) VMI is providing an online marketplace for the posting, bidding, and sale of certain services, products and other equipment (the “**Goods**”), and that VMI shall have no ownership or control over the bid or sales process other than providing an online platform for such transactions.

In order to list, bid and purchase Goods on the VMI purchasing website (the “**Site**”), User must agree to these Terms, which includes our privacy policy and any other terms and conditions on the Site.

By posting for bid and accepting a bid on Goods, User agrees to be bound by all terms and conditions of these Terms. The Site is operated by VMI, which reserves the right to make changes to these Terms at any time. Changes to these Terms are effective when the changes are posted to the Site. Continuing to post for bid and accepting bids on Goods in VMI will constitute User’s agreement to these Terms, as may be amended from time to time. It is User’s responsibility to review the changes and decide if User wants to continue to use the Site. Changes to these Terms may occur at any time and without notice to User.

### THE MARKETPLACE

VMI provides a forum for connecting vendors (each a “**Vendor**”) to buyers (each a “**Buyer**”) via an online platform at the Site (the “**VMI Marketplace**”). The VMI Marketplace provides Buyer the ability to post needed Goods for bid and to accept and acquire such Goods from Vendors. VMI is simply providing the platform for transactions to take place and does not act as the agent for Buyers or any Vendors.

### ACCOUNT SET-UP

User must login with an existing account or complete the Site registration process to create an account with a user name and password (the “**Account**”) in order to make full use of the posting and bid process for Goods in the VMI Marketplace. User is responsible for protecting all login information and passwords. User must provide accurate, current and complete information, and ensure information is updated in a timely manner to maintain its accuracy and completeness. Any use of the Site through a User’s Account will be deemed as being authorized by User. VMI is entitled to rely on the contact and other information that is supplied to us through a User’s Account. User Accounts are non-transferable and non-assignable.

### ELIGIBILITY REQUIREMENTS

Bidding on Goods, placing Goods for bid and accepting Vendor bids through the Site is limited to parties that can lawfully enter into a contract. Minors are not allowed to buy or sell on the Site. To bid on items through the Site, Customer must certify that the party accessing the Site on Customer’s behalf has full power and authority to execute, deliver and perform the transactions contemplated by these Terms. By use of the Site, Customer is representing and warranting that they are an organization duly organized, validly existing and in good standing under the appropriate laws.

### USER RESTRICTIONS

Users may not post bids or accept bids for Goods that Customer reasonably knows: infringe upon intellectual property rights of others or are illegal, fake, counterfeit, or stolen. Furthermore, Buyer must meet all Vendor terms and conditions required by all applicable Federal Acquisition Regulations. User Accounts may be limited in a matter that allows them to make a certain number of bids within a given time at the sole discretion of VMI. Marketplace transactions must take place between two different individuals, organizations or entities. VMI reserves the right to refuse service to anyone at any time for any reason. VMI reserves the right to prohibit User’s access to and ability to post Goods and accept bids on Goods in the VMI Marketplace. At VMI’s discretion, Goods may be removed at any time without notice. The way listings appear in the VMI Marketplace may change without notice to users of the VMI Marketplace (Buyers or Vendors).

Buyers are expected to post Goods and accept bids on Goods and in quantities that they are capable and willing to purchase in the delivery timeframe and in accordance with the terms and conditions specified by Vendor. Buyers are required to accept bids on and purchase Goods in accordance with the accepted bid price and terms and conditions from Vendor. By accepting a bid on a Good on the Site, Buyer agrees that Buyer has the right and the means to purchase the Goods and close on the transactions contemplated thereby in a timely manner. Failure to adhere to the terms and conditions herein may be grounds for suspension or termination of Buyer User Account.

Vendors are expected to bid on items and in quantities they are capable and willing to sell in the delivery timeframe they specify. Vendors are required to sell Goods in accordance with the accepted bid price, terms and conditions provided by Vendor in its bid. By bidding on and selling Goods on the Site, Vendor agrees that Vendor has the right and the means to sell the Goods, that Vendor has access to the Goods, and that Vendor's terms and conditions provided in your bid is complete and accurate. Vendors are required to ship an order by the agreed upon delivery terms with each Customer. Failure to deliver by the provided date may be grounds for suspension or termination of Vendor User Account.

USER AGREES TO NOT DIRECTLY OR INDIRECTLY COMPETE WITH VMI AND ITS SUCCESSORS AND ASSIGNS BY CREATING OR HAVING ANY OWNERSHIP STAKE IN A SIMILAR MARKETPLACE FOR THREE (3) YEARS FOLLOWING USERS LAST ACCESS OF THE SITE. USER ACKNOWLEDGES THAT VMI SHALL OR MAY IN RELIANCE OF THESE TERMS PROVIDE USER ACCESS TO TRADE SECRETS, VENDOR AND VENDOR INFORMATION, AND CERTAIN PROPRIETARY INFORMATION, AND OTHER CONFIDENTIAL DATA AND THAT THE PROVISIONS OF THESE TERMS ARE REASONABLY NECESSARY TO PROTECT VMI AND ITS GOOD WILL. THE USER AGREES TO RETAIN SAID INFORMATION AS CONFIDENTIAL AND NOT TO USE SAID INFORMATION ON HIS OR HER OR ITS OWN BEHALF OR DISCLOSE SAME TO ANY THIRD PARTY.

USER ACKNOWLEDGES AND AGREES THAT THE VMI MARKETPLACE CONTAINS COPYRIGHTED MATERIAL, TRADE SECRETS, AND OTHER PROPRIETARY INFORMATION OF VMI AND ITS LICENSORS AND IS PROTECTED BY COPYRIGHT LAWS, INTERNATIONAL TREATIES, AND TRADE SECRET LAWS, AS WELL AS, OTHER INTELLECTUAL PROPERTY LAWS. USER WARRANTS, REPRESENTS AND AGREES THAT IT WILL NOT, NOR PERMIT ANY PERSON OR ENTITY TO: (I) DECOMPILE, UNLOCK, REVERSE-ENGINEER, DISASSEMBLE, OR OTHERWISE TRANSLATE THE OBJECT CODE OF THE VMI MARKETPLACE TO HUMAN-PERCEIVABLE FORM EXCEPT AS PERMITTED BY APPLICABLE LAW; (II) OTHERWISE DISCOVER OR REPLICATE THE SOURCE CODE FROM WHICH SUCH OBJECT CODE MAY BE GENERATED; OR (III) EXCEPT AS EXPRESSLY SET FORTH HEREIN, MODIFY OR MAKE DERIVATIVE WORKS OF THE VMI MARKETPLACE.

Notwithstanding anything to the contrary in this Agreement, VMI reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the VMI Marketplace or any portion of the VMI Marketplace, for any reason; (2) to modify or change the VMI Marketplace or any portion of the VMI Marketplace, and any applicable policies or terms; (3) to interrupt the operation of the VMI Marketplace, or any portion of the VMI Marketplace, as necessary to perform routine or non-routine maintenance, error correction, or other changes; or (4) block any user's right to access the VMI Marketplace or any user name, user handle or other identifier, which could be deemed to be an impersonation or misrepresentation of your identity, or a misappropriation of another person's name or identity.

#### **DATA PROTECTION; STATISTICAL DATA**

VMI will maintain reasonable administrative, physical and technical safeguards designed for the protection, confidentiality, and integrity of Customer and Vendor data. VMI will not use Buyer or Vendor User data except to provide the VMI Marketplace, or to prevent or address service or technical problems, in accordance with these Terms or as instructed by Buyer or Vendor.

User owns all intellectual property rights in User data provided to the Site. Without limiting User's ownership rights in User data, User acknowledges and agrees that VMI shall have the right (i) to utilize data capture, syndication and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally and non-User identifiable data or information resulting from User's acquisition of Goods through and use of the VMI Marketplace ("**Statistical Data**"), and (ii) to use User data for internal needs, including the improvement of the VMI Marketplace and the development of new services. Statistical Data and the corresponding categorical analysis shall include, but not be limited to, market view analysis, selection criteria (i.e. price, viability, technical specs, etc.), buyer purchasing

trends, category specifications versus marketing trends; purchasing behaviors; bid variances; win-loss root analysis; geographic pricing trends; selection trends; crew analytics; and development of best practices and other feedback that may be published on the VMI Marketplace. Statistical Data may be collected by VMI for any lawful business purpose without a duty of accounting to User, provided that Statistical Data is used only in an aggregated form, without specifically identifying the source of the Statistical Data. VMI shall own all rights, title and interests in the Statistical Data.

## **BID ACCEPTANCE**

When a Buyer accepts a Vendor's bid on the Site, the Buyer will be responsible for payment pursuant to the Vendor's requirements. VMI will not be responsible for receipt or payment of the sales price, taxes or any other costs or expenses associated with use of the Site or the transactions contemplated therein.

## **TAXES**

It is the User's responsibility to pay any taxes associated with a transaction. VMI will not be held responsible for the collection/payment or lack of collection/payment of any taxes or fees due to the use of the Site. VMI is not responsible for determining when or what tax should be charged or paid.

## **RETURN POLICY & VENDOR WARRANTY**

Buyer is subject to Vendor's return policy and Vendor's warranty, if any.

For all of Vendor's Goods, Vendor will accept, and process returns, refunds and adjustments in accordance with these Terms and the Vendor's customary policies. The Buyer is subject to the Vendor's return policy. Vendor will determine and calculate the amount of all refunds and adjustments (including any taxes, shipping and handling or other charges) or other amounts to be paid to Vendor from Buyers in connection with marketplace purchases through the Site and work directly with credit card processor. Vendor will promptly provide refunds and adjustments that you are obligated to provide and as required by law, and in no case later than thirty (30) days after the obligation arises. If the Vendor sends evidence of the return(s) to VMI, then VMI will provide credit on the following month's invoice to the Vendor. All Goods are subject to Vendor's warranty, if any. VMI does not provide any warranties to the Goods.

## **TERMINATION**

VMI reserves the right to monitor User accounts to determine if policies or laws are being broken. Any illegal or fraudulent activity or actions that lack good faith may be reported by VMI to law enforcement or other third parties. Upon termination, User must pay VMI any fees that were incurred prior to the effective date of termination.

## **WARRANTY & REPRESENTATIONS**

THE VMI MARKETPLACE IS PROVIDED "AS-IS", "WHERE IS" AND "AS AVAILABLE", AND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, VMI MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SITE AND THE VMI MARKETPLACE (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES LICENSED OR PROVIDED TO USER BY VMI OR ANY VENDOR, OR OTHERWISE UNDER THESE TERMS. WITHOUT LIMITING THE FOREGOING, VMI DOES NOT WARRANT THAT THE SITE SHALL BE AVAILABLE AT ANY TIME OR LOCATION, UNINTERRUPTED, SECURE OR ERROR-FREE AND THAT ALL ERRORS CAN BE CORRECTED. VMI WILL NOT BE LIABLE FOR ANY LOSS DUE TO ERRORS IN OUR SOFTWARE OR THE SOFTWARE OF OTHERS THAT WE USE.

## **INDEMNITY/LIMITATION OF LIABILITY**

USER AGREES TO DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS VMI AND ITS AFFILIATES (AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AGENTS AND REPRESENTATIVES) FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, COSTS, EXPENSES, LOSSES, DAMAGES, JUDGMENTS, PENALTIES, INTEREST, EXPENSES AND OTHER LIABILITIES OF ANY NATURE (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH

ALLEGATIONS, DEMANDS, SUITS, AUDITS, INVESTIGATIONS OR PROCEEDINGS MADE OR BROUGHT AGAINST VMI ARISING OUT OF OR RELATED TO (i) ANY ACTUAL OR ALLEGED BREACH OF USER'S REPRESENTATIONS, WARRANTIES OR OBLIGATIONS SET FORTH IN THESE TERMS; (ii) AN ALLEGATION OF INFRINGEMENT OR MISAPPROPRIATION OF A COPYRIGHT, TRADEMARK, OR TRADE SECRET OF A THIRD PARTY; (iii) USER'S UNAUTHORIZED USE OF THE SITE OTHER THAN AS PERMITTED PURSUANT TO THESE TERMS; (iv) THE ACQUISITION OF GOODS THROUGH THE VMI MARKETPLACE, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, INJURY AND DEATH; OR (v) THE TRANSACTIONS CONTEMPLATED BETWEEN USER AND VENDOR PURSUANT TO THESE TERMS, INCLUDING THE ABILITY TO ACCESS OR USE THE SITE, THE OFFER, SALE, ACQUISITION, OR RETURN OF ANY GOODS AND COLLECTION AND PAYMENT OF PROCEEDS, FEES, OR TAXES RELATED TO THE SALE, DELIVERY AND USE OF THE GOODS.

IN NO EVENT SHALL VMI OR USER, OR ANY PARENT, SUBSIDIARY, OR AFFILIATE OF VMI OR USER, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE OR GOODWILL, PERSONAL OR PROPERTY DAMAGE REGARDING THESE TERMS OR RESULTING FROM OR IN CONNECTION WITH VMI'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE SITE OR OTHER PRODUCTS OR SERVICES ACQUIRED PURSUANT TO THESE TERMS, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF THE LIABLE PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

### **NON-CIRCUMVENTION**

User hereby covenants and agrees that User will not circumvent, avoid, bypass or obviate VMI, directly or indirectly, to avoid payments or fees, commission or any other form of compensation or financial benefit to VMI in any transaction with any Buyer or Vendor or affiliate of Buyer or Vendor, introduced to User through the VMI Marketplace or Site nor shall User contact any Buyer or Vendor directly or indirectly outside of the VMI Marketplace or complete the purchase of Goods (in whole or in part) placed on the Site for bid outside of the VMI Marketplace. If a transaction of any kind is consummated within twelve (12) months of User's last access to the Site, then the transaction shall be deemed to have been arranged through the VMI Marketplace pursuant to these Terms, and User shall remunerate fees to VMI, within thirty (30) days of such transaction, that are payable by but not otherwise received from the Buyer or Vendor in such transaction. .

### **DISPUTES**

User agrees to release VMI from claims, demands, and damages related to transaction disputes placed through the VMI Marketplace. If a dispute arises, Buyers and Vendors are expected to deal with each other directly to come to a resolution.

### **JURISDICTION**

Any claim against VMI in relation to the Site shall be adjudicated in a state or federal court having jurisdiction over Harris County, Texas, and Customer agrees to the exclusive jurisdiction of these courts. These Terms shall be governed by Texas law, without regard to conflict of laws principles thereof.

### **ATTORNEY'S FEES**

If VMI does take any legal action against User as a result of your violation of these Terms, VMI will be entitled to recover from User, and User agrees to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted to VMI.

### **CONTENT AGREEMENT**

By agreeing to these Terms, User grants the royalty-free use of any content submitted by User to VMI. User represents that User owns any content submitted to VMI or User has the right to distribute such submitted content. User will be solely responsible for any violation of rights for unauthorized content.

### **SEVERABILITY**

If any section of these Terms is deemed unlawful, void or unenforceable, then that section shall be deemed severable and the remainder of the agreement will remain in force. Failure to enforce any section of this agreement by VMI does not constitute a waiver of VMI' right to enforce such section or any other section in the future.