

CITY OF LINCOLN/LANCASTER COUNTY  
**CONTRACT AWARD NOTIFICATION  
ANNUAL REQUIREMENTS FOR  
REPAIRS OF THE MUFFIN MONSTER  
AND CHANNEL MONSTER GRINDERS**

DATE: July 26, 2007

CONTRACT PERIOD: July 17, 2007 thru July 18, 2008

CONTRACTOR: JWC Environmental  
4485 Commerce Drive, Ste. 109  
Buford, GA 30518-3473

PURCHASING DIVISION  
K-STREET COMPLEX  
440 SOUTH 8<sup>TH</sup> STREET  
LINCOLN, NEBRASKA 68508  
(402) 441-7410

Company Representative:  
Telephone No.: 800-331-8783  
FAX No.: 770-925-9406

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THE CITY/COUNTY'S SPECIFICATIONS AND THE CONTRACTOR'S ACCEPTED PROPOSAL AND PRICING SCHEDULES, NOW ON FILE IN THE OFFICE OF THE CITY CLERK AND/OR THE COUNTY CLERK, ARE ADOPTED BY REFERENCE AND ARE AS FULLY A PART OF THIS CONTRACT FOR THE ABOVE-NAMED COMMODITY AS IF REPEATED VERBATIM HEREIN.

**PER AGREEMENT  
AS ATTACHED**

NO ACTION NEED BE TAKEN BY THE CONTRACTOR AT THIS TIME. ORDERS FOR MATERIAL WILL BE MADE AS NEEDED BY THE VARIOUS CITY/COUNTY DEPARTMENTS.

DEPARTMENTS REQUIRING CATALOGS AND/OR PRICING SCHEDULES SHALL NOTIFY THE CONTRACTOR DIRECTLY.

EO # 079658  
Dated: 07/24/07



**JWC**  
Environmental



## Free Labor Reconditioning Service

Under the Free Labor Reconditioning Policy, JWC Environmental provides free labor services on refurbishing all Muffin Monster® and Channel Monster® grinders. When the work is performed by factory personnel at a JWC Environmental service center there is no labor charge for the reconditioning or replacement of any product component manufactured by JWC Manufacturing (excluding motor, reducer and controllers). The customer pays only for shipping and parts. Upon receipt, the unit will be disassembled and all parts will be factory inspected. After inspection but before commencing work, JWC Environmental provides a quote on required replacement parts.

### Advantages under this policy include:

- New one year factory warranty
- Improved reliability
- Reduced maintenance man-hours
- Reduced parts inventory
- The latest changes in specifications for maximum service life
- Avoidance of the uncertainties and delays of self-repair
- Reducing life cycle ownership costs

## Cutter Cartridge Exchange

Another option is the Cutter Cartridge Exchange Program. Muffin Monster owners can order a factory reconditioned cutter cartridge in exchange for their unit requiring reconditioning. Subject to availability, the replacement cartridge will be shipped in response to a user's request. The factory exchange cutter cartridge is invoiced at the exchange price plus the core deposit and freight. Once the exchange return has been sent back, a credit will be issued for the core deposit less any accrued freight.

In addition to the advantages of the free labor services listed above, the exchange program results in significant reduction of machine down time.

## Limited Warranty

Reconditioned units are backed by a limited one (1) year warranty for material and workmanship. This warranty covers the reconditioned cutter cartridge only (excludes motor, reducer and controller).

F41JWCM0999C

**APPROVED BY THE CITY OF LINCOLN**

### Service Centers

JWC Environmental  
2600 S. Garnsey Street  
Santa Ana, CA 92707  
(949) 833-3888  
(800) 331-2277  
FAX (714) 751-1913

  
Chris Beutler, Mayor of Lincoln

JWC Environmental  
4485 Commerce Drive Suite 109  
Buford, GA 30518-3473  
(770) 925-7376  
(800) 331-8783  
FAX (770) 925-9406

## **JWC ENVIRONMENTAL TERMS AND CONDITIONS OF SALE**

Unless otherwise specifically agreed to in writing by the buyer ("Buyer") of the products purchased hereunder (the "Products") and JWC Environmental (the "Company"), the sale of the Products is made only upon the following terms and conditions and no others.

### **DELIVERY**

Unless otherwise provided in our price quotation, delivery of the Products shall be made F.O.B. place of manufacture. Any shipment, delivery or installation dates quoted by the Company are estimated and the Company shall be obligated only to use reasonable efforts to meet such dates. The Company will in no event be liable for any delays in delivery or failure to give notice of delay or for any other failure to perform hereunder due to causes beyond the reasonable control of the company. Such causes shall include, but not be limited to, acts of God, the elements, acts or omissions of manufacturers or suppliers of the Products or parts thereof, acts or omissions of Buyer or civil and military authorities, fires, labor disputes or any other inability to obtain the Products, parts thereof, or necessary power, labor, materials or supplies. The Company will be entitled to refuse to make, or to delay, any shipments of the Products if Buyer shall fail to pay when due any payment owed by it to the Company, whether under this or any other contract between the Company and Buyer.

### **PAYMENT TERMS**

Subject to any contrary terms set forth in our price quotation, the full net amount of each invoice is due and payable in cash within 30 days from the date of the invoice unless otherwise specified by the Company in writing. If any payment is not received within such 30-day period, any unpaid balance shall commence to bear interest at the rate of 18 percent per annum (or the highest rate permitted by applicable laws, if lower) from the 31st day after the date of invoice. In all cases, regardless of partial payment, title to the Products shall remain in the Company until payment for the Products has been made in full.

### **PRICES**

Prices of the Company's Products are subject to change without notice. Quotations are conditioned upon acceptance within 30 days unless otherwise stated and are subject to correction for stenographic or clerical errors. Prices include charges for regular packaging but, unless expressly stated, do not include charges for packing for export or for special requirements of government or other purchaser. Letter of credit payment is required on direct foreign orders.

### **TAXES**

The Company's prices do not include sales, use, excise or similar taxes. Accordingly, Buyer shall, in addition to paying the prices specified by the Company, pay or reimburse the Company for any sales, use, excise or similar taxes attributable to Buyer's purchase or use of the Products.

### **RETURNS**

Any claims for shortages must be made to the Company in writing within five calendar days from the delivery date. No Products may be returned for cash. No conforming Product may be returned for credit after delivery to Buyer without Buyer first receiving written permission from the Company to do so. A return material authorization number must be issued by the Company to the Buyer before a Product may be returned. All requests to return material should be addressed to the Company at its place of business in Costa Mesa, California. If approval is granted, a minimum of 20% handling charge will be assessed to cover inspection, testing, handling and accounting expenses and Buyer will be responsible for transportation costs. Special equipment or equipment other than current designs or parts thereof may not be returned for credit.

### **LIMITED WARRANTY**

Subject to the terms and conditions hereof, the Company warrants until one year after the operation start-up (written start-up date notification required) of the system of which such Product is a part or until 18 months after delivery of such Product to Buyer, whichever is earlier, that each Product will be free of defects in material and workmanship. If (a) the Company receives written notification of such defect during the warranty period and the defective Products use is discontinued promptly after the defect is discovered by the person who then owns the defective Product (the "Owner") and (b) if the Owner forwards the Product to the Company's nearest service/repair facility, transportation and related insurance charges prepaid, the Company will cause any Products whose defect is covered under this warranty to either be replaced or be repaired at no cost to the Owner. The foregoing warranty does not cover repairs required due to repair or alteration other than by the Company's personnel, accident, neglect, misuse, transportation or causes other than ordinary use and maintenance in accordance with the Company's instructions and specifications. In addition, the foregoing warranty does not cover any Products, or components thereof, which are not directly manufactured for the Company. To the extent a warranty for repair or replacement of such Products or components not manufactured directly for the Company and not warranted by the Company is available to Buyer under agreements of the Company with its vendors, the Company will make such warranties available to Buyer. Costs of transportation of any covered defective item to and from the nearest service/repair center and related insurance will be paid or reimbursed by Buyer. Any replaced Products will become the property of the Company. Any replacement Products will be warranted only for any remaining term of the original limited warranty period and not beyond that term.

### **DISCLAIMER OF WARRANTIES AND LIMITATIONS OF LIABILITIES**

THE COMPANY'S FOREGOING LIMITED WARRANTY IS THE EXCLUSIVE AND ONLY WARRANTY WITH RESPECT TO THE PRODUCTS AND SHALL BE IN LIEU OF ALL OTHER WARRANTIES (OTHER THAN THE WARRANTY OF TITLE), EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY STATEMENTS MADE BY EMPLOYEES, AGENTS OF THE COMPANY OR OTHERS REGARDING THE PRODUCTS. THE OBLIGATIONS OF THE COMPANY UNDER THE FOREGOING WARRANTY SHALL BE FULLY SATISFIED BY THE REPAIR OR THE REPLACEMENT OF THE DEFECTIVE PRODUCT OR PART, AS PROVIDED ABOVE. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF THE COMPANY TO BUYER AND OTHERS ARISING FROM ANY CAUSE WHATSOEVER IN CONNECTION WITH BUYER'S PURCHASE, USE AND DISPOSITION OF ANY PRODUCT COVERED HEREBY SHALL, UNDER NO CIRCUMSTANCES, EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT BY BUYER. NO ACTION, REGARDLESS OF FORM, ARISING FROM THIS AGREEMENT OR BASED UPON BUYER'S PURCHASE, USE OR DISPOSITION OF THE PRODUCTS MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES, EXCEPT THAT ANY CAUSE OF ACTION FOR THE NONPAYMENT OF THE PURCHASE PRICE MAY BE BROUGHT AT ANY TIME.

## **JWC Environmental - Terms and Conditions of Sale (cont'd)**

The remedies provided to Buyer pursuant to the limited warranty, disclaimer of warranties and limitations of liabilities, described herein are the sole and exclusive remedies.

Unless specifically agreed to in writing by the Company, no charges may be made to the Company by Buyer or any third party employed by buyer for removing, installing or modifying any Product.

The Company and its representatives may furnish, at no additional expense, data and engineering services relating to the application, installation, maintenance or use of the Products by Buyer. The Company will not be responsible for, and does not assume any liability whatsoever for, damages of any kind sustained either directly or indirectly by any person through the adoption or use of such data or engineering services in whole or in part.

### **CONFIDENTIAL INFORMATION**

Except with the Company's prior written consent, Buyer shall not use, duplicate or disclose any confidential proprietary information delivered or disclosed by the Company to Buyer for any purpose other than for operation or maintenance of the Products.

### **CANCELLATION AND DEFAULT**

Absolutely no credit will be allowed for any change or cancellation of an order for Products by Buyer after fabrication of the Products to fill Buyer's order has been commenced. If Buyer shall default in paying for any Products purchased hereunder, Buyer shall be responsible for all reasonable costs and expenses, including (without limitation) attorney's fees incurred by the Company in collecting any sums owed by Buyer. All rights and remedies to the Company hereunder or under applicable laws are cumulative and none of them shall be exclusive of any other right to remedy. No failure by the Company to enforce any right or remedy hereunder shall be deemed to be a waiver of such right or remedy, unless a written waiver is signed by an authorized management employee of the Company and the Company's waiver of a breach of this agreement by Buyer shall not be deemed to be a waiver of any other breach of the same or any other provision.

### **CHANGES IN PRODUCTS**

Changes may be made in materials, designs and specifications of the Products without notice. The Company shall not incur any obligation to furnish or install any such changes or modifications on Products previously ordered by, or sold to, Buyer.

### **APPLICABLE LAW, RESOLUTION OF DISPUTES AND SEVERABILITY**

This agreement is entered into in Costa Mesa, California. This agreement and performance by the parties hereunder shall be construed in accordance with, and governed by, the laws of the State of California. Any claim or dispute arising from or based upon this agreement or the Products which form its subject matter shall be resolved by binding arbitration before the American Arbitration Association in Los Angeles, California, pursuant to the Commercial Arbitration Rules, excepting only that each of the parties shall be entitled to take no more than two depositions, and serve no more than 30 interrogatories, 10 requests for admissions and 20 individual requests for production of documents, such discovery to be served pursuant to the California Code of Civil Procedure. Any award made by the arbitrator may be entered as a final judgement, in any court having jurisdiction to do so. If any provision of this agreement shall be held by a court of competent jurisdiction or an arbitrator to be unenforceable to any extent, that provision shall be enforced to the full extent permitted by law and the remaining provisions shall remain in full force and effect.

### **ASSIGNMENT**

This agreement shall be binding upon the parties and their respective successors and assigns. However, except for rights expressly provided to subsequent Owners of the Products under "Limited Warranty" above, any assignment of this agreement or any rights hereunder by Buyer shall be void without the Company's written consent first obtained. Any exercise of rights by an Owner other than Buyer shall be subject to all of the limitations on liability and other related terms and conditions set forth in this agreement.

### **EXCLUSIVE TERMS AND CONDITIONS**

The terms and conditions of this agreement may be changed or modified only by an instrument in writing signed by an authorized management employee of the Company. This instrument, together with any amendment or supplement hereto specifically agreed to in writing by an authorized management employee of the Company, contains the entire and the only agreement between the parties with respect to the sale of the Products covered hereby and supersedes any alleged related representation, promise or condition not specifically incorporated herein.

COMPANY'S PRODUCTS ARE OFFERED FOR SALE AND SOLD ONLY ON THE TERMS AND CONDITIONS CONTAINED HEREIN. NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS CONTAINED IN BUYER'S SEPARATE PURCHASE ORDERS OR OTHER ORAL OR WRITTEN COMMUNICATIONS, BUYER'S ORDER IS OR SHALL BE ACCEPTED BY THE COMPANY ONLY ON THE CONDITION THAT BUYER ACCEPTS AND CONSENTS TO THE TERMS AND CONDITIONS CONTAINED HEREIN. IN THE ABSENCE OF BUYER'S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED HEREIN, THE COMPANY'S COMMENCEMENT OF PERFORMANCE AND/OR DELIVERY OF THE PRODUCTS, OR THE COMPANY'S STATEMENT OF ACKNOWLEDGMENT OF THE RECEIPT OF BUYER'S PURCHASE ORDER, SHALL BE FOR BUYER'S CONVENIENCE ONLY AND SHALL NOT BE DEEMED OR CONSTRUED TO BE ACCEPTANCE OF BUYER'S DIFFERING TERMS OR CONDITIONS, OR ANY OF THEM. ANY DIFFERENT OR ADDITIONAL TERMS ARE HEREBY REJECTED UNLESS SPECIFICALLY AGREED UPON IN WRITING BY AN AUTHORIZED MANAGEMENT EMPLOYEE OF THE COMPANY, IF A CONTRACT IS NOT EARLIER FORMED BY MUTUAL AGREEMENT IN WRITING, BUYER'S ACCEPTANCE OF ANY PRODUCTS COVERED HEREBY SHALL BE DEEMED ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS STATED HEREIN. THE COMPANY'S FAILURE TO OBJECT TO PROVISIONS INCONSISTENT HERewith CONTAINED IN ANY COMMUNICATION FROM BUYER SHALL NOT BE DEEMED A WAIVER OF THE PROVISIONS CONTAINED HEREIN.