

## EMHART TEKNOLOGIES INC.

### SupplyNET Usage Agreement

**This is a legal document. Read this Agreement carefully. On the earlier of your use of SupplyNET or clicking "I agree," you enter into this Agreement on behalf of your company and any parent, affiliate, subsidiary or other related entity (collectively "Affiliate") each of which shall be deemed to constitute a Member. You represent and warrant that you are authorized to execute this Agreement on behalf of your company and each Affiliate.**

This Agreement describes the terms and conditions governing all use and access of SupplyNET and, unless otherwise agreed upon by you and Emhart, all transactions between you and Emhart whether or not communicated by or through SupplyNET. The term "Agreement" includes this SupplyNET Usage Agreement, Emhart's Conditions of Purchase, and all schedules, exhibits, attachments, policies, rules, regulations and riders established by Emhart as amended from time to time. The terms "Supplier", "Member," "you" and "your" as used in this Agreement include any person or entity that registers for or participates in SupplyNET ("Registration"), regardless of whether or not approved by Emhart. Any use of SupplyNET by you or your Authorized Users binds you and your company to this Agreement. If you or any of your Authorized Users (including any of your Authorized Users who are your Affiliates) are incorporated or have a principal place of business outside of the United States or are otherwise subject to Laws outside the U.S., in addition to this Agreement, your use of SupplyNET is subject to the International Rider, which is part of this Agreement ("International Rider"). In the event of conflict between this Agreement and the International Rider, the International Rider shall control. Amendments or modifications to this Agreement will be posted on SupplyNET and will become effective within 30 days of posting. You agree to periodically review SupplyNET for amendments. Any use of SupplyNET after the 30-day time period or any subsequent transaction of business with Emhart (whether or not through SupplyNET) shall constitute acceptance of the Agreement as amended. Capitalized terms shall have the meanings ascribed to them herein and in each Schedule.

#### **1. ABOUT SUPPLYNET**

Emhart Teknologies Inc. ("Emhart") provides a web-based service located on the Internet at <http://www.emhart.com>, [www.emhartsupply.net](http://www.emhartsupply.net) and/or their successors (collectively, "SupplyNET") that allows approved Emhart suppliers to review product specifications, forecasts and projections for Emhart's goods and services, post or search inquiries, engage in negotiations and close transactions with Emhart. SupplyNET includes all software, network, servers, data, computers or other hardware used to operate and maintain SupplyNET ("SupplyNET Equipment").

#### **2. ACCESS TO SUPPLYNET**

##### **2.1 LIMITED LICENSE**

During the term of this Agreement, you and your Authorized Users shall have a limited, revocable, non-transferable license, subject to the terms and conditions set forth in this Agreement, to use SupplyNET through designated CPUs only, solely to conduct the supply transactions between you and Emhart. All rights not expressly granted by this limited license are reserved to Emhart. Only approved Emhart Suppliers and their Authorized Users are permitted to conduct transactions through SupplyNET. Emhart Suppliers and each of their Authorized Users must use only their real names on or through SupplyNET. Member and each of its Authorized Users may not use SupplyNET without first agreeing to be bound by this Agreement and having its Registration approved by Emhart. Notwithstanding the foregoing, if any person or entity conducts a transaction on SupplyNET without affirmatively accepting the terms and conditions of the Agreement, including without limitation, any applicable bid or offering rules or without having a Registration approved by Emhart, that person or entity shall nonetheless be bound by all the terms and conditions of this Agreement and any applicable rules.

##### **2.2 MEMBER ADMINISTRATOR**

You agree to designate a single Authorized User who shall be your agent in providing your Authorized Users with access to SupplyNET ("Administrator"). The Administrator shall be responsible for the relationship between SupplyNET and each of your Authorized Users. Only the Administrator may

contact Emhart to update Member and Authorized User profiles, approve new Authorized User accounts, close delinquent Authorized User accounts and/or update transactions of your Authorized Users.

### **2.3 SECURITY CERTIFICATES, PASSWORDS AND USER IDS**

Emhart shall issue and provide to each Administrator all security certificates, passwords and user identifications (collectively "Passwords and User IDs") for distribution to Authorized Users. You shall keep full and accurate records of all issued, active and inactive Passwords and User IDs. The right to use Passwords or User IDs terminates immediately upon the earlier of termination of this Agreement or an Authorized User's employment authorization to access SupplyNET. Member is responsible for issuing, administering, updating and ensuring that proper security measures are in effect with respect to all Passwords and User IDs. Member is solely responsible for monitoring, supervising and terminating, when appropriate, its Authorized Users' access to SupplyNET. The use of Passwords and User IDs constitutes acts of Member and Emhart may rely upon the instructions, consent given and all action taken, without verifying the identity or authority of any person accessing SupplyNET by means of such Passwords and User IDs.

### **2.4 AUTHORIZED USERS**

"Authorized Users" means individuals or entities who have been appointed by you to transact business through SupplyNET on your behalf; and have been assigned and issued unique Passwords and User IDs. Although each Authorized User is personally responsible for its use of SupplyNET, you are responsible for ensuring that each Authorized User is aware of and complies with this Agreement. You are responsible for the acts and omissions of your Administrator and all Authorized Users.

### **2.5 EQUIPMENT; AVAILABILITY**

Certain hardware, software and telecommunications and other services and equipment (collectively "Member Equipment") are required to access and use SupplyNET. You are responsible for obtaining, implementing and operating all Member Equipment and bearing all related costs and expenses. SupplyNET strives for 7x24 availability; however, it does not guarantee the availability of SupplyNET or that access will be uninterrupted or error free. Emhart reserves the right to interrupt, limit, suspend or terminate SupplyNET from time-to-time for any purpose including without limitation, for maintenance and upgrades provided that when practicable Emhart, will use commercially reasonable efforts to notify Members in advance. Neither Emhart nor Emhart Representatives shall be responsible or liable for any damages arising from any interruption, limitation, suspension or termination of SupplyNET regardless of the cause.

### **3. LINKING AND FRAMING**

SupplyNET Member Content and Enhanced Content (as defined elsewhere in this Agreement) may provide links or references to other sites and other sites may link to SupplyNET. Emhart does not endorse the individuals, companies, products or materials associated with websites that may be linked from or may link to SupplyNET from their sites. Emhart is not responsible for Member Content, Member Content as formatted for Enhanced Content and/or for any linked or referenced content and is not liable for any damages or injury arising from the linked or referenced content or websites. Member shall not: (a) provide or create a link to SupplyNET; (b) frame any SupplyNET content; or (c) include any links in Member Content to or from web pages or web sites outside SupplyNET.

### **4. PAYMENT**

Payment with respect to any transactions made through SupplyNET shall be governed exclusively by Emhart's Conditions of Purchase, the latest version of which may be found at [www.emhart.com](http://www.emhart.com). In the event Emhart elects, in its sole discretion, to charge fees for access to and/or use of SupplyNET, Member shall pay all fees including any transaction or subscription fees, if any, (collectively "Fees") in accordance with this Agreement and the applicable Fee Schedule. Member and Authorized Users shall not circumvent the payment of Fees, use any systems or techniques or engage in any activities or practices intended to or which in fact disrupt or otherwise interfere with Emhart's interest in any Fees. Unless otherwise stated, Fees will be due as provided elsewhere on SupplyNET or in the applicable invoice. Delinquent fees, may incur a late fee equal to the greater of 1.5% per month or the highest amount permitted by Law. Member is solely and exclusively responsible for all applicable value added,

use, sales, property, federal, state, local or other taxes, duties or assessments levied on SupplyNET services and/or transactions.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 MEMBER'S REPRESENTATIONS AND WARRANTIES**

Member, for itself and on behalf of each Authorized User, represents and warrants to Emhart as follows:

(a) Member and each Authorized User have read this Agreement and agree to be legally bound jointly and severally;

(b) Member and each Authorized User have the authority to enter into this Agreement for themselves and their Affiliates and their compliance with this Agreement will not violate any agreement to which they may be otherwise bound.

(c) Member agrees to transact business with Emhart electronically through SupplyNET.

(d) Neither Member nor any of its Authorized Users shall use SupplyNET in violation of any Laws or in furtherance of any anti-competitive or collusive purposes or activities;

(e) Neither Member nor any of its Authorized Users will permit others to modify or tamper with SupplyNET or functionality provided through SupplyNET, including without limitation, its software, "look and feel," content or data of Emhart or any other Member;

(f) Member Content and all material uploaded to SupplyNET by Member or any of its Authorized Users: (i) will not impose an unreasonable or disproportionate burden on SupplyNET Equipment; (ii) will not knowingly, after exercising commercially reasonable precautionary measures contain any viruses, malicious code, disabling devices, spiders, spy ware, bots of any nature, time bombs, Trojan horses, worms or other computer programming routines that may capture keystrokes, damage or interfere with SupplyNET; (iii) is true and accurate; (iv) contains no links or reference to third party websites to competitive or prohibited goods or services; (v) is not fraudulent and does not involve the sale of stolen items; (vi) does not infringe upon any third party's rights, including without limitation, copyright, patent, trademark, trade secret, rights of publicity or privacy or other proprietary rights; (vii) will not knowingly be a violation of any Laws; (viii) is not obscene, indecent or pornographic; and (ix) is not defamatory, trade libelous, threatening or harassing.

(g) Member and each of its Authorized Users will take reasonable precautions to preserve the confidentiality of Passwords and User IDs, the security of SupplyNET and the privacy of other Member Confidential Information;

(h) Member and each of its Authorized Users shall not breach or attempt to breach the security or privacy of SupplyNET or that of any other Member, Authorized User or third party that is hosting or interfacing with SupplyNET, or use or distribute software or other tools or devices designed to compromise the privacy or security of SupplyNET or its Members;

(i) Member and each of its Authorized Users shall not: (i) reproduce, copy, translate, modify, adapt, create derivative works from, distribute, transmit, transfer, republish, compile or decompile, reverse engineer, (unless required by mandatory law for interoperability purposes only and then only as a last resort if Member is unable to obtain the necessary information from Emhart within a reasonable time period after written request), display, remove or delete the Emhart Intellectual Property (as defined in this Agreement), or the content and information provided by Emhart, its third party licensors or other Members; (ii) allow unauthorized disclosure or copying of any part of SupplyNET or any SupplyNET content regardless of source; (iii) allow access to or use of SupplyNET or any component thereof by or for the benefit of anyone who is not an Authorized User, including without limitation, providing timeshare services, service bureau services, outsourcing or consulting services ; (iv) engage in spamming, phishing, mail bombing, spoofing or any other fraudulent, illegal or unauthorized

use of SupplyNET; (v) engage in any conduct that, in Emhart's sole discretion, restricts, inhibits or adversely impacts Emhart, Emhart Representatives, or other Members and/or Authorized Users from using SupplyNET; (vi) remove, obscure or alter any copyright, trademark or other proprietary rights notices affixed to or contained within SupplyNET; or (vii) engage in or allow activity Emhart deems to be inappropriate or otherwise inconsistent with of this Agreement.

(j) Neither Member nor its Authorized Users will, in connection with any use of SupplyNET, obtain or attempt to obtain, or exchange or attempt to exchange, confidential or proprietary information regarding any other Member or its Authorized Users other than in the context of a bona fide purchase or sales transaction with that other Member.

## **5.2 EMHART'S REPRESENTATIONS AND WARRANTIES**

Emhart represents and warrants to Member that it will:

(a) not knowingly use, or permit or authorize any third party to use SupplyNET for any unlawful purpose;

(b) take commercially reasonable measures to preserve the security of SupplyNET, Passwords and User Ids and Member Confidential Information;

(c) take commercially reasonable measures to avoid the introduction to SupplyNET by Emhart of any viruses, time bombs, Trojan horses, worms or other computer programming routines that may damage or interfere with SupplyNET.

(d) take reasonable measures to post accurate information with respect to its product specifications, forecasts and projections.

## **6. SUPPLYNET AS A MARKETPLACE**

In providing SupplyNET, Emhart is only providing electronic access to Emhart's supplier needs. The content published on SupplyNET may include technical inaccuracies or typographical errors. Changes may be made periodically and at any time to SupplyNET content. Emhart has no control over the quality, safety or legality of goods or services advertised, offered or sold by Members, the identity of any Emhart Suppliers or any Authorized User, the truth or accuracy of any information provided by Emhart Suppliers or any Authorized User (including the information related to a Member's or an Authorized User's perceived or actual identity), the ability of Emhart Suppliers or any Authorized User to perform as represented or complete any transaction. Each Member is solely and exclusively responsible for its Member Content. Emhart does not endorse any Member Content (including the underlying source of any Enhanced Content created on behalf of the Member). Emhart has no obligation to monitor Member Content or links to or from SupplyNET. Notwithstanding the above, Emhart, may take any action it deems necessary or appropriate to protect the integrity, purpose and intent of SupplyNET and protect Emhart, Emhart Representatives or other parties from liability or action which interferes with or impairs Emhart's relationship with any Member or other third party.

## **7. CONFIDENTIALITY OF INFORMATION; OWNERSHIP**

The following constitutes the confidential and proprietary information of Emhart or Member, as applicable ("Confidential Information").

### **7.1 MEMBER CONFIDENTIAL INFORMATION**

With respect to Member, Confidential Information shall include the following information that is treated and identified as confidential on disclosure by Member and marked "Confidential": (a) nonpublic product, pricing information and other materials whether in its original source form or as represented in Enhanced Content (but expressly excluding Emhart's ownership rights in Enhanced Content as set forth below) (collectively, "Member Content"); (b) information which Member or any of its Authorized Users provides to other Emhart Suppliers to facilitate SupplyNET transactions ("Member Transaction Information"); or (c) information about Member's business provided through the registration process ("Member Registration Information").

## **7.2 EMHART CONFIDENTIAL INFORMATION**

With respect to Emhart, Emhart Representatives and Emhart's technology suppliers, Confidential Information shall include all information that is treated as confidential by Emhart, including without limitation; (d) SupplyNET Equipment; (e) Passwords and User IDs; (f) cookies; (g) business, technical, operational, information, new product information, projections, forecasting, training material and/or process flows, sales and marketing materials, and financial or other similar information ; (h) pricing information related to Emhart's goods and services; (i) Emhart Intellectual Property; (j) all content on SupplyNET other than Member Content and Member Content of another Member disclosed to you as a SupplyNET Member ; (k) all SupplyNET information and related data transactions other than Member Transaction Information; and/or (l) Aggregated Data. Confidential Information shall not include the fact that Member participates in SupplyNET and/or any information that: (m) is known to the party receiving such information at the time of disclosure; (n) is or becomes generally known to the public other than through a breach of this Agreement; (o) is independently developed by the party receiving such information without reliance on or use of such information; or (p) is rightfully provided to the party receiving such information by a third party not subject to an obligation of confidentiality.

## **7.3 MAINTENANCE AND DISCLOSURE OF CONFIDENTIAL INFORMATION; PRIVACY**

Each party shall take commercially reasonable precautions to safeguard the confidentiality of the other party's Confidential Information and shall not disclose or use such Confidential Information except as may be permitted in this Agreement. Each party may disclose Confidential Information of another party to such of its employees, contractors and agents who have a need to know such information in connection with the conduct of business on SupplyNET provided that each such employee, contractor or agent has agreed to be bound by the confidentiality obligations contained in this Agreement. Emhart and Emhart Representatives may disclose Member Confidential Information to other Emhart Suppliers of SupplyNET who are designated by Member as recipients of Member Confidential Information. Each Member shall maintain the confidentiality of all other Member Confidential Information received and shall use such information solely for the purposes for which it was provided or if accidentally disclosed shall not use it but shall return it to such Member. The parties acknowledge that any unauthorized use or disclosure of Confidential Information of another party may cause irreparable damage to such party, its third party licensors, subcontractors and any other affected parties. If an unauthorized use or disclosure of Confidential Information occurs, the party making the unauthorized disclosure or use shall immediately notify the other party and any other affected parties and shall, at its own expense, take action to recover such Confidential Information and institute safeguards to prevent subsequent unauthorized use or disclosure. Member shall not act or fail to take any reasonable action in connection with its activities on SupplyNET which would constitute a breach of confidentiality or invasion of privacy of any other Member in any applicable jurisdiction.

## **7.4 OWNERSHIP/LICENSE/INTELLECTUAL PROPERTY RIGHTS**

Emhart retains all of its ownership rights in and to SupplyNET, Emhart Confidential Information, Emhart Intellectual Property, Aggregated Data and the Enhanced Content (other than source information and material of the Member Content). With respect to Enhanced Content, unless otherwise agreed to by the parties in writing, neither Emhart nor Emhart Representatives shall be required to provide Member with a license to copy, use or otherwise reproduce the Enhanced Content. Member retains all of its ownership rights in and to Member Content and Member Confidential Information. Member grants Emhart a revocable, non-exclusive, worldwide and royalty-free license for Emhart and its affiliates, and their respective Emhart Suppliers, directors, officers, shareholders, employees, representatives, agents, attorneys, consultants, successors and assigns, and their respective third party contractors, licensors and suppliers (collectively, "Emhart Representatives") to: (a) adapt Member Content to the SupplyNET data format requirements ("Enhanced Content"); (b) display Member Content on or as a part of SupplyNET by means of any technology; (c) use Member Content to process Supplier transactions in connection with SupplyNET; (d) use Member Content in connection with performance of this Agreement; and (e) use, develop, analyze, exploit and extract information ("Aggregated Data") from Member Content, Member Transaction Information, Member Registration Information and other data collected, retained, stored or accumulated through Member's or its Authorized Users' use of SupplyNET, for internal and commercial purposes, including without limitation, for purposes of: (i) developing and making available to third parties (at no charge or for a fee) aggregated information regarding industry trends, purchasing patterns and retail intelligence and research; (ii) performing its duties and obligations under an agreement with

third party licensors or other Emhart Suppliers; (iii) internal record-keeping and internal reporting by Emhart or Emhart Representatives; (iv) measuring the performance of third party licensors and service providers; and (v) reporting performance and other statistical information concerning SupplyNET. Emhart shall not disclose Aggregated Data in a manner that reasonably permits such information to be identified with an individual Member or specific Member transaction.

Emhart's trade secrets, trade/service names, trade/service marks, copyrights, patents and inventions whether or not registered, any Aggregated Data, Enhanced Content, technology used to develop, operate and maintain SupplyNET, SupplyNET Equipment, and all data, software text, typefaces, graphics, logos, button icons, images, interfaces, audio clips, designs, illustrations, configurations, displays, screens, concepts, and other materials and information appearing on displayed in connection with embodied in or contained within or relating to SupplyNET (such as the selection and arrangement of materials therein and the look and feel" thereof) except for Member Content (collectively "Emhart Intellectual Property") are the exclusive property of Emhart or Emhart Representatives and are protected by applicable Laws. Member Confidential Information and all patents, inventions, trademarks, copyrights, trade names and other intellectual property related thereto (except for the Enhanced Content), are the exclusive property of Member and are protected by applicable Laws. Any use, modification or distribution not authorized by this Agreement of Emhart Intellectual Property on SupplyNET, in whole or in part, in all forms, media and technologies now existing or hereafter developed, is strictly prohibited. Nothing contained herein shall be construed as conferring to Member or its Authorized Users in any manner, whether by implication, estoppel or otherwise, any license, title or ownership of or to any Emhart Intellectual Property.

## **8. DISCLAIMERS AND LIMITATION OF LIABILITY**

**8.1 DISCLAIMERS. MEMBER'S USE OF EMHART DATA OR CONTENT OTHER THAN THAT PROVIDED ON THE MOST CURRENT VERSION OF SUPPLYNET IS AT MEMBER'S SOLE RISK. SUPPLYNET SERVICES, INCLUDING WITHOUT LIMITATION, USE OF PASSWORDS AND IDS, ALL CURRENCY CONVERSION, DATE AND TIME CONVERSION, LANGUAGE TRANSLATION SERVICES, SECURITY, PERFORMANCE, AVAILABILITY, MEMBER PARTICIPATION, ACCURACY OF MEMBER DATA, MEMBER CONTENT (INCLUDING ENHANCED CONTENT) MEMBER GOODS, SERVICES AND TRANSACTIONS, INCLUDING CONTENT CONTAINED ON THIRD PARTY SITES LINKED TO OR FROM SUPPLYNET, ARE PROVIDED "AS IS" AND "AS AVAILABLE". EMHART AND EMHART REPRESENTATIVES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT THERETO AND EXPRESSLY DISCLAIM ALL LIABILITY FOR DIRECT AND INDIRECT DAMAGES, WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, INFORMATIONAL CONTENT (OTHER THAN POSTED EMHART SPECIFICATION DATA) AND ANY WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. EMHART AND EMHART REPRESENTATIVES ALSO EXPRESSLY DISCLAIM THE APPLICATION OF ANY PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (ALSO COMMONLY REFERRED TO AS THE VIENNA CONVENTION) AND HEREBY OPTS OUT OF THE APPLICATION OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT ('UCITA'). MEMBER ACCEPTS FULL RESPONSIBILITY FOR ANY SUPPLYNET TRANSACTIONS MADE BY MEMBER OR ITS AUTHORIZED USERS. ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES AND ARE NOT PART OF THIS AGREEMENT. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE FOREGOING DISCLAIMERS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

**8.2 LIMITATION OF LIABILITY. EMHART AND EMHART REPRESENTATIVES (INCLUDING WITHOUT LIMITATION, EMHART'S THIRD PARTY SUPPLIERS, LICENSORS OR CONTRACTORS ) SHALL NOT BE LIABLE FOR ANY INDIRECT (INCLUDING WITHOUT LIMITATION AS AN INDEMNITOR OF MEMBER) INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF USE, LOSS OF DATA, CORRUPT OR UNAVAILABLE DATA, LOSS OF DATA USE, LOST OPPORTUNITY, TRANSACTION LOSSES, OPPORTUNITY COSTS, INTERRUPTION OF BUSINESS**

