

1. **ACCEPTANCE:** Seller shall be deemed to have accepted this order and its terms and conditions when Seller (a) executes and returns the acknowledgement, (b) commences work on the goods the subject of this purchase order, or (c) delivers to Buyer any of the goods the subject of this purchase order. Acceptance of this purchase order is expressly limited to the terms and conditions on the face of this purchase order, any documents referred to on the face thereof and these Terms and Conditions of Purchase. Any proposal for additional or different terms or any attempt by Seller to modify any of the terms and conditions of this purchase order is hereby objected to and rejected. However, any such proposal shall not operate as a rejection of this offer (unless the proposal seeks to vary the description, quantity, price or delivery schedule of the goods), but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this order is deemed to be an acceptance of a prior offer to sell made by Seller, Buyer's acceptance is expressly limited to the terms contained on the face of this purchase order, any documents referred to on the face thereof and these Terms and Conditions of Purchase. Any additional or different terms or any attempt by Seller to modify any of the terms and conditions of the purchase order shall be deemed material and is hereby objected to and rejected, but the purchase order shall not operate as a rejection of Seller's offer unless that offer contains variances in description, quantity, price or delivery schedule of the goods or requires Buyer to accept all of the terms and conditions of that offer.

2. **DELIVERY:** Buyer's schedules are based upon Seller's undertaking to insure that the goods will be delivered to Buyer's plant no later than the required date specified on the face hereof. Time is therefore of the essence in connection with this contract. Seller shall be liable to Buyer for any excess costs or expenses incurred by Buyer as a result of any breach of the delivery schedule including, but not limited to any costs incurred by Buyer in effecting cover. If at any time Seller has reason to believe that deliveries will not be made as scheduled, Seller shall immediately give written notice thereof to Buyer so that Buyer may, if it desires, take steps to purchase such goods elsewhere. If any goods are not delivered within the time specified in this contract or, if no time is so specified, within a reasonable time, Buyer may cancel this contract, without prejudice to its other rights, and may refuse to accept delivery of such goods. Acceptance of late delivery by Buyer shall not be deemed a waiver of Buyer's claims for damages as a result of late delivery.

3. **FORCE MAJEURE:** Buyer may delay delivery or acceptance of goods occasioned by government action or failure of the government to act where such action is required, changes in Buyer's production, schedule, strike, or other labor trouble or fire or unusually severe weather. Seller shall hold such goods at the direction of Buyer and shall deliver them when the cause creating the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this contract at Buyer's request.

4. **RISK OF LOSS/INSURANCE:** Unless otherwise set forth in this contract, risk of loss shall pass to Buyer upon its actual receipt of the goods. Seller shall effect and maintain "all risk" replacement value insurance on all insurable equipment, material and supplies which constitute or form a part of the goods purchased hereunder. Coverage shall include loss or damage in transit and during testing and commissioning. The policy shall be effected prior to commencing any work for supplying any goods and/or services under this contract. The policy shall be maintained in force until acceptance of the goods by Buyer. The policy shall insure the interests of Buyer and its employees, agents and customers.

5. **LIABILITY FOR INJURY AND INSURANCE:** If this contract covers the performance of labor for Buyer, Seller assumes and agrees to indemnify and save harmless Buyer and its respective officers, agents, and employees from any liability and expense (including attorney fees and other costs and expense of litigation) with respect to any and all claims for bodily injury or death or property loss or damage to whomsoever such claims may be asserted including specifically, but without limitation, employees of Buyer, employees of Seller, and members of the general public, which arise out of or are attributed, directly or indirectly to the performance of this contract.

6. Seller agrees to furnish Buyer a certificate of insurance showing that Seller has adequate insurance coverage for public liability (including contractual liability) and property damage in amounts acceptable to Buyer and

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Workman's Compensation insurance (or evidence of authority to self-insure). Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification of Buyer.

7. PRICE WARRANTY: Seller represents that the prices shown on the face hereof are complete and no additional charges, such as but not limited to, taxes, packaging, labeling, storage, price escalation or insurance shall be added without Buyer's express written consent. Seller shall give Buyer written notice of any proposed increases in prices at least one hundred twenty (120) days in advance of any such increases. Seller also represents that the prices charged for these goods are the lowest prices charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in this contract. Seller agrees that any price reduction in goods covered by this contract occurring subsequent to the date hereof will be applicable to this contract.

8. CHANGES: Without Buyer's written assent, no goods may be substituted in lieu of those specified. Buyer reserves the right to make alterations, deviations, additions to and omissions from the specifications with respect to the goods or the quantity of goods ordered hereunder. Seller shall perform all of the changes requested. All such changes will be set forth in a written change order prepared by Seller which will specify the change, the adjustment of the delivery time, if any, and the basis of compensation for such change. A change will not become effective, and Seller will not be entitled to any additional compensation with respect to the goods, unless and until the written change order is approved by Buyer in writing.

9. PAYMENT: Payment shall be due hereunder to Seller on account of any invoice submitted hereunder as set forth on the face of this contract. Any cash discount period shall be computed as commencing with receipt of invoice or receipt of the goods, whichever is later. No payment made, except final payment, shall be evidence of the performance of Seller's duties hereunder, either wholly or in part, and no payment, including final payment, shall be construed as an acceptance of defective or improper goods.

10. WARRANTIES: Seller expressly warrants that all goods covered by this contract: (a) shall be new (unless otherwise required or permitted by the specifications), merchantable, safe, of good quality and free of all defects, latent or patent, in design, material and workmanship; (b) shall conform to the approved drawings, specifications, descriptions and samples furnished or specified by Buyer and shall be satisfactory to Buyer; (c) shall, if Seller knows or has reason to know the particular purpose for which Buyer intends to use such goods, be suitable and sufficient for Buyer's intended purpose; (d) shall conform to any statements made on the containers, labels or advertisements therefore; and (e) shall be designed, manufactured, labeled, tested, inspected, packaged, shipped and provided in compliance with Buyer's requirements and all applicable laws, regulations, carrier tariffs and classifications. These warranties shall run in favor of Buyer, its successors, assigns, customers and users of its products. Seller, at Buyer's option and upon written notice from Buyer, agrees to repair or replace, at Seller's expense, any goods covered by this contract which prove defective in material or workmanship within one (1) year from Buyer's actual receipt (or any greater period of time provided for in the specifications) and agrees to bear all costs incurred by Buyer involving damage to or the reworking of other work or goods caused by any such defect in the goods purchased hereunder. This option is not exclusive, and Buyer may exercise any other rights, either alone or in conjunction with this option, to fully remedy any breach of any of the warranties by Seller.

11. PATENTS: Seller warrants that the goods covered by this contract and the sale or use of them will not infringe any United States or foreign patents, copyrights or trademarks. Seller agrees, upon receipt of notification, to promptly assume full responsibility for defense of any claim, suit or proceeding which may be brought against Buyer, its agents or customers for any actual or alleged infringements of any patents or trademarks by reason of the sale or use of the goods the subject of this contract, as well as for any actual or alleged unfair competition resulting from similarity in design, trademark or appearance of goods furnished hereunder. Seller further agrees to indemnify Buyer, its agents and customers against any and all expenses, losses, royalties, profits and damages, including court costs and attorneys' fees, resulting from any such claim, suit or proceeding, including any payments made in settlement thereof. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if Buyer so desires, and the costs of such representation shall be paid by Seller.

12. INSPECTION AND REJECTION: Buyer's acceptance of any goods purchased hereunder is subject to Buyer's inspection and approval at Buyer's plant within a reasonable time after receipt of goods. Buyer reserves the right to reject, refuse or revoke acceptance of and return, at Seller's expense, any items found to be defective

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in material or workmanship or otherwise not conforming to the terms of this contract. Buyer will charge Seller for the costs of unpacking and inspecting goods rejected and all transportation and handling costs incurred in connection therewith. No inspection rights of Buyer shall, however, relieve Seller from its obligation to fully and adequately test and inspect the goods sold hereunder.

13. COMPLIANCE WITH LAWS: Seller shall comply with all federal, state and local laws, execute orders, regulations and all municipal ordinances and regulations in performing its obligations under this contract.

14. NO LIEN CONTRACT/WAIVERS: Seller agrees not to serve or file any Notice of Furnishing or mechanic's lien with respect to the goods to be furnished hereunder. Seller agrees to furnish if and when requested by Buyer, good and sufficient waivers of lien and of the right to file a lien upon property associated with the performance of this contract from every person or corporation furnishing materials or performing any work by virtue of any written or oral contract with Seller, and in case any such lien is filed, Seller will secure a discharge or cancellation thereof without cost to Buyer and shall reimburse Buyer for any cost, damage or expense Buyer may incur in connection therewith.

15. INDEMNIFICATION: Seller will protect, defend, indemnify and hold harmless Buyer and Buyer's agents, employees, customer, successors and assigns from and against any and all claims, actions, liabilities, damages, losses, costs and expenses, including court costs and attorneys' fees, whether resulting in injury or death to any person, damage to any property, or any other damage or loss by whomsoever suffered, arising out of or claimed to result in whole or in part from any actual or alleged (a) defect in any goods supplied hereunder, whether latent or patent, including actual or alleged improper design or fabrication of such goods or the failure of such goods to comply with the drawings and specifications or with any express or implied warranties of Seller; (b) negligence of defective workmanship in the manufacture or the providing of such goods; (c) Seller's breach of any of the terms or conditions of this contract; or (d) Seller's violation of any law, statute, ordinance, rule or regulation. This indemnification shall be in addition to Seller's warranty obligations.

16. INSTALLMENT CONTRACT/QUANTITY: If the goods described herein are to be shipped on an installment basis per Buyer's releases, Buyer shall not be liable for any goods processed in excess of releases issued by Buyer's purchasing department and any such goods shipped without releases may, at Buyer's option, be refused by Buyer, stored by Buyer for Seller's account or reshipped to Seller at Seller's expense. Buyer accepts no responsibility for goods or materials shipped in excess of the quantities specified on the face of this contract, and any such excess may, at Buyer's option, be returned to Seller at Seller's expense.

17. PROPRIETARY INFORMATION: Seller agrees to keep confidential all information (including drawings and specifications) furnished to it by Buyer and agrees not to disclose to any other person or use such information except for the purpose of performing Seller's obligations hereunder. Seller acknowledges that money damages would be an insufficient remedy for any breach of this obligation and that any such breach would cause Buyer irreparable harm. Accordingly, Seller agrees that Buyer shall be entitled to injunctive relief for any breach or threatened breach of this obligation (without the necessity of posting any bond), and agrees not to oppose the granting of such relief.

18. TERMINATION: Buyer reserves the right to terminate this contract or any part hereof for its sole convenience upon a thirty (30) day advance written notice. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any of its suppliers or subcontractors to similarly stop work if the goods are custom products, then Seller shall be paid a reasonable termination charge equal to or less than the incremental actual out-of-pocket direct costs resulting from the termination. Seller shall not be paid for any work done or costs incurred after its receipt of a notice of termination. In the event of Buyer's termination for its sole convenience, any termination claim must be submitted by Seller to Buyer within sixty (60) days after the effective date of termination.

19. Buyer may also terminate this contract or any part thereof upon the occurrence of any of the following events of default: (a) death, dissolution, termination of existence, insolvency, or business failure of Seller;

20. (b) appointment of a receiver for any part of Seller's property, assignment for the benefit of Seller's creditors or the commencement of any proceedings under any bankruptcy, insolvency or reorganization laws by or against Seller; (c) Seller's breach of any of the terms or conditions hereof, including any of its warranties; (d) Seller's failure to make delivery in accordance with agreed delivery requirements; (e) Seller's failure to

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replace any defective goods within a reasonable time after receipt of written notice from Buyer as set forth in Paragraph 8 above; or (f) Seller's failure to provide Buyer with timely and satisfactory assurances of future performance upon Buyer's request for such assurances. In the event of Buyer's termination for cause, Buyer shall not be liable to Seller for any amount and Seller shall be liable to Buyer for any and all damages sustained by Buyer as a result of the defaults which gave rise to the termination for cause.

21. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY LOST OR ANTICIPATED PROFITS OR OTHER SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES RESULTING FROM ANY TERMINATION OF THIS CONTRACT OR ANY PART HEREOF.

22. REMEDIES AND WAIVER: The remedies herein reserved to Buyer shall be cumulative and in addition to any other or further remedies provided in law or equity. No waiver by Buyer of any breach of any provision of this contract shall be effective unless in writing and signed by Buyer, and even then such waiver shall not constitute a waiver of any other breach of such provision or of any other breach of this contract.

23. SET-OFF: All claims by Seller for money due or to become due from Buyer shall be subject to deduction or set-off by Buyer by reason of any counterclaim arising out of this or any other transaction between Buyer and Seller.

24. ARBITRATION: All claims, disputes and other matters in question arising out of or relating to this contract or the breach thereof, except for claims which are barred by Paragraph 20 hereof or which have been waived by Seller's acceptance of final payment, shall be decided by arbitration in accordance with the arbitration rules of American Arbitration Association, unless the parties mutually agrees otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The arbitration hearing shall be held at a place designated by the American Arbitration Association in the City of Toledo, Ohio. Notwithstanding any provisions of law or rules of arbitration to the contrary, either party to the arbitration may avail itself of discovery procedures, including depositions, interrogatories and requests for production and inspection of documents and reports as provided in the Ohio Rules of Civil Procedure, such rules to be enforced should disputes arise thereunder by the court which would otherwise have jurisdiction to issue an order compelling the parties to arbitrate their disputes. Notwithstanding anything contained herein to the contrary, if a dispute arises before the conclusion of the performance of this contract, Seller is obligated to continue performance of its obligations hereunder and maintain the delivery date during any arbitration proceedings, and Buyer shall continue to make payments in accordance with this contract.

25. LIMITATION OF ACTIONS/LIMITATION ON BUYER'S LIABILITY: Any action against Buyer based on Buyer's alleged breach of its obligations hereunder must be commenced within one (1) year after the cause of action has accrued. Buyer's liability for any such breach shall in no case exceed the price allocable to the goods which give rise to the claim.

26. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY LOST OR ANTICIPATED PROFITS OR OTHER SPECIAL CONSEQUENTIAL OR INCIDENTAL DAMAGES OR FOR ANY PENALTIES.

27. ENTIRE AGREEMENT: This contract (including these Terms and Conditions of Purchase) and any documents referred to on the face hereof constitute the entire agreement between the parties. No modification of any of the terms or conditions of this contract shall be effective against Buyer unless such modification is in writing and duly signed by Buyer.

28. ASSIGNMENT: Seller shall not assign any of its rights or delegate any of its duties under this contract, or assign any monies due to Seller hereunder, without the prior written consent of Buyer.

29. APPLICABLE LAW: This contract shall be deemed to have been entered into and shall be construed according to the laws of the State of Ohio<sup>6</sup>. Seller agrees to furnish Buyer a certificate of insurance showing that Seller has adequate insurance coverage for public liability (including contractual liability) and property damage in amounts acceptable to Buyer and Workman's Compensation insurance (or evidence of authority to self-insure). Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification of Buyer.