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## CONTRACT AND PURCHASE ORDER GENERAL TERMS AND CONDITIONS

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### **1. Acceptance of Entire Agreement:**

This Contract and/or Purchase Order, including the terms and conditions on the face of the Purchase Order hereof, and all documents specified by Buyer as being a part of this Contract and/or Purchase Order (hereinafter called Contract) shall constitute the complete and final written agreement between Buyer and Seller and supersedes all other agreements and understandings between the parties regarding the subject matter of this Contract. This Contract is expressly subject to, and Seller's acceptance, either oral, written, or by action, expressly conditioned upon, Seller's assent to each and all of the terms and conditions hereof and no other terms, whether consistent or conflicting, are part of the agreement among the parties.

Reference to Seller's bids, or proposals shall be accepted only if clearly set forth in the body of this Contract, and such that terms or conditions stated by the Seller as a bid or proposal or in acknowledging receipt of this contract shall not be binding on the Buyer if in conflict with, or in addition to, any of the provisions of this order unless expressly agreed to in writing by the Buyer, notwithstanding the Buyer's act of accepting or paying for any shipment or similar act of the Buyer.

### **2. Attachments:**

Documents designated by Buyer as part of the Contract, including supplemental terms and conditions, if any, are incorporated by reference the same as if set out in full herein and, in the event of a conflict between these terms and conditions and any other documents or supplemental terms and conditions, these terms and conditions shall control.

### **3. Price:**

The articles shipped or work performed against this Contract shall not be invoiced at a higher price than shown without express written consent of Buyer. No charges will be allowed for packing, crating, freight surcharges, expedited delivery or cartage unless stated in this Contract. Invoices must itemize all such charges and taxes as separate items at Seller's actual cost. Cash discounts will be calculated from the date invoices acceptable to Buyer in Buyer's sole judgment are received by Buyer or from the date of the receipt of the goods pursuant to this Contract, whichever is later.

### **4. Requirements Contract:**

Unless specific quantities are provided in the Contract documents, and there is written commitment by Buyer to take a stated portion or all of the quantity, this Contract shall be considered a requirements contract and may be terminated at any time if, in Buyer's sole judgment and discretion, Buyer's continued need for the goods and services which are the subject of this Contract has ended.

### **5. Testing:**

Buyer reserves the right to test alternate products or technologies.

### **6. Quantity:**

The quantity of goods delivered by Seller pursuant to this Contract shall not exceed nor be less than the quantity specified, without Buyer's prior written permission.

## **7. Packing, Shipping and Routing:**

All delivered articles shall be packed and packaged in accordance with instructions or specifications in this Contract or referred to in drawings or specifications for the articles or work hereunder. In the absence of any such instructions or specifications on packing and packaging, Seller shall comply with the best commercial practice for shipment adequate for safe arrival at destination and for storage against weather and transportation, for complying with carrier regulations and for securing lowest transportation rates (including rail, motor truck, express and parcel post, or in accordance with such special shipping instructions as issued by Buyer). Any extra transportation cost resulting from failure to comply with this section shall be charged to Seller's account.

All shipments must be properly insured.

If shipment is by railroad carload, car initials, numbers, routing, and date of shipment must be provided to Buyer.

Cars must be loaded to carload minimums or Seller will be charged with any excess freight which Buyer shall be required to pay because of failure to so load.

Each car must be carded with the name of Seller, the quantity and description of each item, size and grade of goods, and Buyer's Contract (Purchase Order) Number.

Goods arriving without proper notices will be held until the desired information is received and all costs incidental thereto will be charged to Seller.

## **8. Purchase Order Number:**

Buyer's Purchase Order number will be found in the upper middle of the face of the Contract (Purchase Order). It must be plainly marked on all shipments, packing slips, invoices, and any other documents related to the Contract or order.

## **9. Packing List:**

A packing list showing Purchase Order number, release number, and an itemized description of contents, including Purchase Order line number and stock code number where applicable, must be included with each package. Special emphasis on compliance with this section is to be given to direct-from-manufacturer shipments.

## **10. Warranties, Inspection, Rejection:**

All goods furnished must conform strictly to specifications, drawings, samples or other descriptions furnished; the workmanship and, where the materials to be used are not specified, the materials must be the best of their respective kinds. All goods will be subject to inspection and approval by Buyer. Final inspection will be made after receipt of goods by Buyer; if rejected, they will be held for disposition at Seller's risk and expense and any payment on account thereof shall be promptly refunded by Seller. Any inspection or approval at Seller's works or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this Purchase Order, shall be provisional only and shall not constitute final acceptance or be construed as a waiver of the foregoing right of inspection and approval or rejection after receipt of goods by Buyer. If specifications for the manufacture of goods covered by this Contract have been given by Buyer, Seller may be given a reasonable opportunity to correct defects after the receipt of such goods by Buyer, but only in the case correction can be made within a reasonable time. Seller expressly warrants that the goods furnished pursuant to this Contract are fit and sufficient for the purpose intended, the goods are merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship. Seller guarantees that such goods or any part

thereof found defective within one year after being put into use by Buyer will be replaced without charge. Such replacement is without prejudice to any other remedy of Buyer.

**11. Delivery:**

Seller shall furnish sufficient labor and management forces, plant, and equipment and shall work such hours (including night shift, overtime, weekend and holiday work, without additional cost to Buyer) as may be required to assure timely delivery.

Regardless of delivery or performance in installments, Seller's obligation is not severable. Buyer will not accept shipments sent C.O.D. without Buyer's prior express written consent and will return them at Seller's risk.

**12. Title and Risk of Loss:**

Risk of loss of all goods shall pass to Buyer upon Buyer's physical receipt of the goods. Notwithstanding restrictive legends to the contrary, title and plans, drawings and specification provided by Buyer for goods shall be vested and remain with Buyer and may be used by Buyer for any purpose and may not be used by Seller for any other purpose.

Title shall pass to Buyer in accordance with specific terms of the Contract. If Buyer makes progress payments, title to the goods shall be transferred to Buyer as payments are made in the same proportion as the cumulative payments bear to the Contract price. Seller shall also identify such goods as the property of Buyer, unless Buyer waives identification in writing.

**13. Changes:**

The Buyer reserves the right at any time to change, by written notice, any of the following: specifications, drawings and data incorporated in this Contract where the items to be furnished are to be specially manufactured for the Buyer; quantity; methods shipment or packaging; place of delivery; time of delivery; or any matters affecting this Contract.

If any changes by Buyer causes an increase or decrease in the cost of, or the delivery schedule for, the goods covered by this Contract, Seller shall make an equitable adjustment in the Contract price or delivery schedule, or both. Any claims by Buyer for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from Seller's receipt of the change.

**14. Payment Terms:**

Invoices shall be payable on the 45<sup>th</sup> day following shipment, if the price and payment terms of the invoices shall be in accordance with the price and payment terms specified in this Contract and if the goods shall have been received in apparent good condition. If Buyer and Seller agree to payment terms other than Net 30 Days, such terms shall be stated in the Contract. Payment of invoices does not constitute acceptance of goods, articles of work or labor covered by this Contract (and payment thereof is without prejudice to any and all claims of the Buyer against the Seller).

Drafts for the purchase made under this Contract will not be honored.

**15. Invoices and Statements:**

Unless otherwise specified, itemized invoices, on Seller's forms, must be rendered to Buyer at the time of each shipment, accompanied by original Bill of Lading or express receipt, otherwise Buyer cannot prevent delays in payment.

Each invoice shall include: Buyer's Purchase Order number; date and method of shipment; terms of shipment (F.O.B. point of shipment, freight allowed; or F.O.B. destination); whether the shipment moved prepaid or collect; car initials and numbers and routing if shipment was made by railroad; itemized

quantities and description and the applicable prices of the goods shipped; discount terms; stock number. Monthly statements of account, if rendered, should be mailed to Buyer.

**16. Patents:**

Seller shall, at its expense, defend any suit or proceeding brought against Buyer, its affiliates, successors and assigns, based on any claim that any goods or any component part furnished hereunder infringes any U.S. or foreign letters patent (except infringement necessarily resulting from adherence to Buyer's specifications or drawings) provided that Buyer notifies Seller, in writing; and assist Seller, as and if required, in defending that suit or proceeding. Seller shall pay all damages, costs and attorney fees awarded in any suit or proceeding.

If the goods, or any component part furnished hereunder, are held to infringe, and their use is enjoined, Seller shall, promptly at Seller's expense: procure for Buyer and its successors and assigns, the right to continue using the goods; replace them with a substantially equivalent non-infringing product; modify them so they become non-infringing with substantially equivalent performance. Seller's obligations must be performed in such a manner so as not to interfere with Buyer's operations as determined in Buyer's sole description. Absent the three items above, Buyer reserves its rights at law or, at its option may return the infringing goods to Seller at Seller's expense and Seller shall promptly refund the purchase price to Buyer. "Promptly" as used herein shall mean such a time period as determined by Buyer at its sole discretion.

**17. Property Furnished to Seller by Buyer:**

All special dies, molds, patterns, jigs, fixtures, and any other property which Buyer furnished to Seller or specifically pays for, for use in the performance of this Contract, shall remain Buyer's property, shall be subject to removal upon Buyer's instruction, shall be for Buyer's exclusive use, shall be held at Seller's risk, and shall be kept insured by Seller at Seller's expense while in its custody or control in an amount equal to the replacement cost, with Buyer named as an additional insured and as loss payee under insurance policies written by insurance companies acceptable to Buyer in Buyer's sole judgment. Seller will furnish certificates of insurance on Buyer's request.

**18. Excusable Delay:**

Fires, floods, strikes, lockouts, epidemics, accidents, shortages or other causes beyond the reasonable control of Seller which prevents Seller from delivering or Buyer from receiving any of the goods and services covered by this Contract shall suspend deliveries until the cause is removed, provided Seller informs Buyer of the cause of the excusable delay and the estimated time of delay, in writing, and subject to Buyer's right of termination as stated herein. If Buyer does not elect to terminate, the goods or services will be promptly delivered when the cause is removed. If the cause for delay is a failure on a part of Seller's production facilities or a source of supply for Seller, Seller must apportion available production or supplies to provide goods and services required hereunder to Buyer on an equitable basis and Seller must use good faith efforts to obtain an alternate source of supply.

**19. Indemnity:**

Seller agrees to defend, indemnify and save Buyer and its affiliates harmless against all liabilities, claims, demands, expenses, and costs, including without limitation reasonable attorney's fees, arising out of Seller's furnishing of goods or services under this Contract, but only to the extent of Seller's negligence. Any insurance recoveries or policies shall not limit any obligation of Seller hereunder.

**20. Work on Buyer's or its Customer's Premises:**

If Seller's work under this Contract involves operations by Seller on the premises of Buyer, or its customers, Seller shall take necessary precautions to prevent the occurrence of any injury to person or property during the progress of the Contract; abide by the rules and regulations of the Buyer governing contractors and suppliers while on Buyer's premises; and maintain in amounts of coverage (but not less than \$2,000,000.00 per occurrence for each such policy) such public liability, property damage, employees'

liability compensation insurance as will protect Buyer from any claim, loss or damage which may result, in any way, from any act or omission of Seller, its agents, employees or subcontractors, and from any claims under applicable worker's compensation laws or regulations. A certificate of insurance naming Buyer as additional insured and loss payee to the extent of Seller's negligence, written by insurance companies acceptable to Buyer in Buyer's sole judgment, shall be furnished by Seller at Buyer's request.

**21. Responsibility Under MSHA of 1977:**

Seller agrees to comply with the training provisions of the Mine Safety and Health Act of 1977 (MSHA) with respect to Seller's employees. Arrangements for the training of employees and the cost of training are the responsibility of Seller. Each employee of Seller shall have in his possession a current MSHA Certificate of Training (MSHA Form 5000-23) for presentation to Buyer's representative prior to entering Buyer's premises. Seller's employees who have not met the mandatory MSHA training requirements may be prohibited from entering Buyer's premises.

**22. Environmental Compliance:**

Seller warrants that the products sold or services furnished hereunder have been and will be produced and furnished in full and complete compliance with all applicable environmental laws and regulations, including but not limited to requirements, if applicable, that chemical substances furnished hereunder be reported for the EPA Toxic Substances Control Act inventory. Seller will furnish to Buyer, upon Buyer's request, all certificates and forms necessary in Buyer's judgement to certify compliance with all such environmental laws and regulations.

**23. Material Safety Data Sheets:**

Seller shall provide a Material Safety Data Sheet (MSDS) to Buyer, for products sold to Buyer hereunder, and where such information is applicable because of the nature of the product, prior to such products being delivered to Buyer's facility.

**24. Compliance with Laws:**

Seller warrants that goods sold or services furnished and the pricing determined under this Contract have been or will be produced, furnished, and determined in full and complete compliance with all applicable laws and regulations. Seller warrants there is no pending or threatened litigation or investigation by any governmental authority or any other person against Seller with respect to the goods sold or services furnished to Buyer.

**25. Governing Law and Uniform Commercial Code:**

This Contract shall be construed, interpreted and governed by the laws of the State(s) shown on the face of the Contract or Purchaser Order thereunder as the place to which invoices are to be sent to the Buyer, or in the case of multi-state shipments, the law of the state where the invoices are to be sent to the Buyer. In addition to the rights provided herein, regardless of whether goods are being sold, leased, or licensed or whether services are being performed, Seller and Buyer agree that both parties have all of the rights, duties, and remedies available under the Uniform Commercial Code as adopted in the Governing State. Any dispute arising under, or in connection with, this Contract will be subject to the exclusive jurisdiction of the courts located in the Governing State.

**26. Liens:**

All goods delivered and services performed under this Contract shall be free of all liens and, if Buyer requests, a proper release of all liens or satisfactory evidence of freedom from liens will be delivered to Buyer.

**27. Limitation of Liability:**

The Managing Agent, in placing this Contract is acting only for and on behalf of the Principal, and the obligations of the Principal hereunder are solely the obligations of the Principal, and no personal liability

whatever shall attach to, or be incurred by, any partner, as such, by reason of any of the obligations, covenants, representations, warranties or agreements of the Buyer contained in this Contract, and that any and all such personal liability of every kind whatsoever, and any and all such rights and claims against any such partner, as such, whether arising at common law, or in equity or created by rule of law, statute, constitution or otherwise, are expressly released and waived as a condition of , and as a part of the consideration for, the execution of this Contract.

**28. Confidential Nature of Information:**

All information on or in connection with this Contract or any drawings or specifications pertaining hereto, being the sole property of Buyer, are to be treated as confidential, and shall not be disclosed in any manner to any other person, firm or corporation without the express written consent of Buyer.

**29. Nondisclosures:**

If Buyer discloses or grants Seller access to any research, development, technical, economic or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Seller will not use or disclose any such information to any other person at any time except as may be necessary in the performance of this Contract, without Buyer's express written consent.

**30. Notice:**

Notice given under this Contract shall be effective three days after posting, postage prepaid, if by mail; twenty-four hours after sending if by telegraph, facsimile (fax), or electronic (e-mail); at the time shown on a confirmed telecopier message; or at the time of delivery if personally delivered.

**31. Waiver:**

Buyer's failure to insist on Seller's strict performance of the terms and conditions of this Contract at any time shall not be construed as a waiver by Buyer for performance in the future.

**32. Resolution of Conflicts or Inconsistencies in this Contract:**

It is the Seller's responsibility to comply with this and all documents referenced specifically on the Contract and to clarify any inconsistencies or conflicts therein, such as the terms of this Contract, additional terms and conditions, general specifications, detailed specifications, and the like furnished by Buyer in connection with this Contract. Should Seller fail to contact Buyer to resolve these conflicts or inconsistencies, Seller shall be solely responsible for errors resulting from conflicts or inconsistencies. Where documents are referenced, the version in effect at the time of order placement shall apply.

Acknowledgement of this Contract in writing, or by accepting and fulfilling the Contract, by Seller shall be deemed an acceptance of the terms and conditions herein. No release from this Contract shall be binding on Buyer unless agreed to in writing by Buyer and specifically labeled as a release.

**33. Business Ethics:**

By acceptance of this Contract, Seller certifies that its policy is to conduct business according to the highest standard of ethics and to comply with the Buyer's policies regarding gifts to employees and business ethics.

**34. Termination:**

Upon receipt of written notice of any termination, Seller shall promptly comply with the directions in such notice and shall, take action necessary to terminate the work as provided in the notice, minimizing costs and liabilities for the terminated work; protect preserve, and deliver in accordance with Buyer's instructions, any property related to the Contract in Seller's possession; and continue performance of any part of the work not terminated by Buyer. If applicable, this Contract may be terminated as provided in paragraph 4, when the Buyer's requirement for the goods and/or services to be provided by Seller ends.

Buyer may terminate this Contract, in whole or in part, 30 days after sending written notice describing default by Seller in the performance of its obligations under this Contract if Seller fails to cure such default to Buyer's sole satisfaction within said period.

If Buyer terminates all or part of this Contract for default, as noted above, Buyer may procure, upon reasonable terms, goods and services similar to those terminated. In addition, Buyer may require Seller to deliver any uncompleted goods related to this Contract by agreeing to pay Seller the prorated reasonable cost of such goods. If Buyer terminates for default, Seller shall be liable for additional costs, if any, for the purchase of such similar goods and services to cover such default. Payments to Seller hereunder shall be the sole and exclusive remedy available to Seller in the event of a termination by Buyer.

Buyer's rights and remedies under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**35. Severability:**

If any provision in this Contract is held to be invalid or unenforceable, such invalidity shall be limited to the provision affected and shall not impair the validity and enforceability of the remainder of the subject provision or the remaining provisions of this Contract.

**36. Time of the Essence:**

Time is of the essence in the performance of Seller's obligations hereunder and Buyer is relying upon timely performance by Seller. Buyer's acceptance of Seller's late performance shall not be deemed a waiver of this provision.

**37. Drug and Alcohol Policy:**

Contractors, subcontractors or agents performing work and/or services at Buyer's premises must have a written Drug and Alcohol Policy. Each contractor, subcontractor, agent or his or her management representative must be able to provide a copy of such a policy to Buyer's representative and describe the procedures used for effective administration of this policy. The policy must prohibit the distribution, use, possession, sale, solicitation for or being under the influence of drugs or alcohol by employees and job applicants on a work site and provide for appropriate testing for such substances.

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