

1. ACCEPTANCE - ENTIRE AGREEMENT. This purchase order constitutes an offer, and acceptance hereof by Seller shall be unqualified, unconditional and subject to any expressly and exclusively limited to the terms and conditions hereof. Buyer objects to and shall not be bound by any provision of Seller's quotation, acknowledgment, invoice, or any other communication from Seller to Buyer which is different from or in addition to the terms and conditions hereof unless such provision is expressly agreed to in writing signed by an authorized representative of Buyer. In the event this purchase order is construed to be an acceptance of any offer, such acceptance is expressly made conditional upon Seller's assent to the terms and conditions hereof. Seller's commencement of work, or shipment of any of the products ordered hereunder shall constitute a definite expression of Seller's unqualified and unconditional assent to the terms and conditions hereof. Acceptance of or payment for products or services described or referred to in this purchase order shall constitute acceptance of such products or services, subject to the provisions hereof, exclusively, and shall not constitute acceptance of or assent to any provision of Seller's quotation, acknowledgment, invoice, or any other communication from Seller to Buyer which is different from or in addition to the terms and conditions hereof. This purchase order constitutes the entire agreement between the parties with respect to the subject matter hereof, and may not be modified, amended or rescinded except by a writing signed by an authorized representative of Buyer. No course of prior dealings between Seller and Buyer nor any usage of the trade shall be relevant to contradict, supplement or explain the terms and conditions of this purchase order.

2. PACKAGING AND SHIPPING. Shipments of the products ordered hereunder shall be made in accordance with specific instructions of Buyer. Seller shall suitably pack and prepare all products for shipment so as to secure the lowest transportation rates consistent with timely delivery, and comply with carrier regulations. Seller shall place a memorandum of contents in each package or container and shall also place Buyer's purchase order number on all packages, containers, shipping documents, invoices and correspondence. If deliveries may not be made as scheduled, Seller shall immediately give Buyer written notice, setting forth the cause and duration of the anticipated delay, granting Buyer pro rata allocation of any items in short supply. Unless otherwise agreed in writing, Buyer will not accept any C.O.D. shipment.

3. DELIVERY-RISK OF LOSS. Time is of the essence in the performance of this purchase order. Seller shall deliver the products ordered hereunder on the delivery date or dates set forth in this purchase order. Seller shall be responsible for and bear the risk of any loss or damage to the products ordered hereunder until received and accepted by Buyer. If the products are rejected by Buyer, Seller shall bear the risk of loss or damage of such products after notice of rejection except for loss or damage cause by the gross negligence of Buyer. Cost of all return shipments shall be borne by Seller.

Every tender of deliver of products ordered hereunder must fully conform to the provisions hereof. Any nonconforming tender or delivery shall constitute a breach and Seller shall not have the right to substitute a conforming tender of deliver without the written consent of Buyer.

Except in instances of delays which are due to such causes, Buyer may, by written notice of default to Seller, (a) terminate the whole or any part of this order in any one of the following circumstances (i) if Seller fails to perform within the time specified herein or any extension hereof, or (ii) if Seller fails to perform any other provisions of this order, or so fails to make progress as to endanger performance of this order in accordance with its terms, and (b) upon such termination Buyer may procure, upon such terms as it shall deem appropriate, products or services similar to those so terminated, in which case Seller shall continue performance of this contract to the extent not terminated and shall be liable to Buyer for any excess costs for such similar products or services. As an alternative remedy and in lieu of termination for default, Buyer, at its sole discretion, may elect (a) to extend the contract deliver schedule and/or (b) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the purchase price shall be negotiated. The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.

4. INSPECTION. All products ordered hereunder are subject to final inspection and acceptance by Buyer at Buyer's plant or other shipping destination. Final inspection, acceptance or rejection of products ordered hereunder shall be made reasonably promptly after delivery, but failure to inspect and accept or reject shall neither relieve Seller from responsibility for such

products which do not conform to the requirements of this purchase order, nor impose liability on Buyer to pay for same. The method of inspection may be by selective, random or 100% sampling. No acceptance of any product shall be deemed to have occurred until Buyer has completed its inspection. In case any products or lots or products or other deliverable items fail to conform to the requirements of this purchase order, Buyer shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Seller shall bear all risks as to rejected products or as to which notice of rejection has been given, except that Buyer shall be responsible for loss or destruction of, or damage to, the products to the extent such loss, destruction or damage results from the gross negligence of officers, agents or employees of Buyer acting within the scope of their employment. Products, lots of products or other deliverable items, which have been rejected or required to be corrected shall be removed, or, if permitted or required by Buyer, corrected in place, by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Seller fails promptly to remove such products, lots of products or other deliverable items, which are required to be removed, or promptly to replace or correct such products, lots of products or other deliverable items which are required to be corrected, then Buyer may either (a) replace or correct products or items and charge to Seller the cost occasioned Buyer thereby, or (b) terminate this contract for default, and in either event may charge Seller the cost for damages occasioned Buyer thereby. To defray the cost of shipping and handling, a service charge on rejected items will be billed to Seller. The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.

5. ASSIGNMENT. Neither this purchase order, nor any interest hereunder, nor any monies due or to become due hereunder may be assigned by Seller without the prior written consent of Buyer. Any such consent given shall not be deemed to waive or prejudice any claim of Buyer against Seller by way of recoupment, set-off or otherwise, arising out of this transaction or any other transactions between Buyer and Seller, its divisions, affiliates or subsidiaries, or to settle or adjust such claims with Seller without notices to assignees.

6. **PRICES AND TAXES.** Seller warrants that all prices are firm unless otherwise agreed to in writing by Buyer, and that the prices charged herein are not in excess of the prices provided by such price regulations as may be in effect and applicable hereto. In the event it is determined that the prices charged herein exceed the prices provided in such regulations, Seller shall refund such excess to Buyer. Prices shall include all federal, state and local taxes from which Seller cannot obtain an exemption. Seller further warrants that the prices of the products ordered hereunder do not exceed those charged by Seller to any customers purchasing the same products in similar quantities.

7. **PATENT, TRADEMARK OR COPYRIGHT PROTECTION.** To the extent products ordered hereunder are manufactured pursuant to designs not originated by Buyer, Seller shall indemnify and save Buyer, its directors, officers, parents, affiliates, subsidiaries, employees, agents, successors and assigns (collectively, the "Buyer Parties"), and their users and customers, harmless from any and all expense (including, without limitation, attorney fees), cost, lost, damage or liability for infringement or alleged infringement of any patent, trademark or copyright based on the sale or use of such products and their process of manufacture, and Seller agrees to defend, at Seller's sole expense, or at the Buyer Parties' option, assist in the defense of any action in which infringement is alleged with respect to the manufacture, sale or use of such products ordered hereunder. In case the manufacture, sale or use of such product or any part hereof is in such action held to constitute infringement and the use of such product or part is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using such product or part, or replace it with a noninfringing product, or part, or modify such product or part so it becomes noninfringing, or remove such product or part and refund the purchase price and the cost of transportation and installation.

8. **COMPLIANCE WITH LAWS.** Seller shall comply with all applicable federal, state and local laws, orders, rules and regulations in performing this purchase order. On request, Seller shall furnish Buyer certificates of compliance with such laws, orders, rules and regulations. Seller shall indemnify and save the Buyer Parties harmless from any and all expense (including, without limitation, attorney fees), cost, loss, damage or liability resulting from Seller's failure, directly or indirectly, to comply with any and all such laws, orders, rules and regulations.

Without limiting the generality of the foregoing, (a) Seller, in accepting this purchase order, represents that the products ordered hereunder were or will be produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and all valid and applicable regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof. Seller shall insert a certificate on all invoices submitted in connection with this purchase order stating that the products ordered hereunder were or will be produced in accordance with the foregoing representations: (b) Any provisions, representations or agreements, including the clause dealing with Equal Opportunity (Executive Order 11246 as amended by Executive Order 11375) set forth in 41 CFR Chapter 50 employment of veterans (Executive Order 11701) set forth in 41 CFR Chapter 60-250, employment of the handicapped (Executive Order 11758) set forth in 41 CFR Part 60-741, and utilization of minority business enterprises (Executive Order 11025) set forth in 41 CFR Chapter 1-1-1310 required thereby to be included in the contract resulting from acceptance of this purchase order are incorporated herein by references. Seller certifies that with respect to orders which exceed \$10,000 and which are not otherwise exempt from the Equal Opportunity Clause (Executive Order 11246) as amended by (Executive Order 11375), Seller is in compliance with the requirements for nonsegregation of facilities set forth in 14 CFR Chapter 60-1.8 and that Seller will furnish the certifications required thereunder; (c) Seller warrants that the products or services ordered hereunder comply with current applicable Federal and State Occupational Safety and Health Acts, and all applicable rules, regulations and standards issued thereunder; (d) Seller warrants that it has supplied Buyer with all material safety data sheets (MSDS) and that all products ordered hereunder are properly labeled as required by the Occupational Safety and Health Act, Hazard Communication Standard, 29 CFR 1910.1200 (1985).

9. INFORMATION, DESIGNS AND DATA. Any knowledge or information which Buyer shall have discussed or may hereafter disclose to Seller, or which may be acquired by Seller in connection with the products or services ordered hereunder shall be deemed confidential and proprietary information of Buyer and shall not be disclosed by Seller or used by Seller except in filing Buyer's order hereunder. Upon completion of this order, Seller shall return all equipment patterns, designs, drawings, engineering data and all other evidences of such confidential and

proprietary knowledge or information acquired by Seller, to Buyer or make other disposition thereof as directed in writing by Buyer.

Equipment patterns, drawings, data, designs, inventions and other technical information supplied by Buyer shall remain Buyer's property and shall be held in confidence by Seller. Such information shall not be reproduced, used or disclosed to others by Seller without Buyer's prior written consent. Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the products ordered hereunder shall be deemed to have been disclosed as part of the consideration for this purchase order and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof. Buyer does not grant indemnity to Seller for infringement of any patent, trademark or copyright. The purchase price of this purchase order is in part, consideration for any design work performed by Seller in connection with this purchase order and incorporated in the products ordered hereunder, and Seller therefore shall not supply such products to others without Buyer's written permission.

10. CHANGES. Buyer shall have the right at any time to make changes in the equipment patterns, drawings, designs, specifications, quantities, delivery schedules, methods of shipment or packaging and place of inspection, acceptance, or point of delivery of any products or services ordered hereunder. No change shall be effective unless authorized in writing by Buyer. If such changes result in delay or an increase or decrease in expense to Seller, Seller shall notify Buyer immediately, and negotiate an equitable adjustment: provided, however, that Seller shall, in all events, proceed diligently to perform the work or services or supply the products ordered hereunder as so changed. No claim by Seller for such equitable adjustment shall be valid unless Seller submits a change notice, accompanied by an estimate of charges resulting from such change, to Buyer, and Buyer accepts the terms of such change notice in writing.

11. NOTICE OF LABOR DISPUTE. Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this purchase order, Seller shall immediately give notice thereof, including all relevant information with respect thereto to Buyer. Seller shall insert the substance of this clause, including the foregoing

sentence, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this order, except that any subcontractor need give the required notice and information only to its next higher-tier subcontractor.

12. **WARRANTY AND INDEMNITY.** Seller warrants that the products and services ordered hereunder shall be free from defects in workmanship and materials, are merchantable, shall strictly conform to applicable specifications, drawings, samples approved by Buyer, or other descriptions, if any, including performance specifications, shall be suitable for their intended purpose, will be transferred to Buyer free of liens, claims and encumbrances, and, if of Seller's design, will be free from design defects. These warranties shall be in addition to all other warranties, express, implied or statutory. All warranties shall run to Buyer, its customers and subsequent owners of the products or end products of which they are a part.

Seller agrees, at its expense, to defend or, at Buyer's option, assist in the defense of any action or claim against any of the Buyer Parties and their users and customers insofar as such action or claim is based upon or alleges breach of the foregoing warranty, negligence in assembly or design, strict liability in tort, failure to properly warn, or other breach of this Agreement. Seller agrees to indemnify the Buyer Parties and their users and customers from and against all expense (including, without limitation), attorney fees, judgments, settlements, cost, loss, damage or liability resulting from the breach of any or all of said warranties, express or implied, negligence in manufacture, assembly or design, strict liability in tort, or failure to properly warn, or other breach of this Agreement. Seller agrees to carry insurance adequate to cover any potential costs or liability hereunder and list Buyer as an additional insured but for only loss due to the negligence of the Seller or Seller's manufacture and/or sale of products that do not meet the requirements of this Agreement. Notice of breach shall be deemed sufficient if given reasonably promptly after discovery thereof by Buyer. All warranties shall be construed as conditions as well as promises and shall not be deemed to be exclusive. No provision of Seller's quotation, acknowledgment, invoice or other communication from Seller to Buyer shall in any way operate to disclaim, limit, exclude or modify the foregoing warranty. If the products ordered hereunder fail to comply with an applicable consumer product safety rule or contain a product defect, which creates a substantial risk of injury to the public, such that notification to the Consumer Product

Safety Commission is appropriate, all costs and expenses of any recall, voluntary or involuntary, shall be the sole and exclusive responsibility of Seller, who agrees to save, indemnify, and hold harmless the Buyer Parties therefrom.

13. SPECIAL TOOLING. Seller at its own expense shall furnish, keep in good condition, and replace when necessary, all dies, tools, gauges, fixtures and patterns necessary for the production of any products ordered hereunder. Buyer may, at its option take possession of, and title to, any dies, tools, gauges, fixtures and patterns that are special to the production of products ordered hereunder, and shall pay to Seller the unamortized cost thereof; provided, however, that this option to purchase shall not apply where Seller is producing with the tooling a substantial quality of like products for sale to others.

14. BUYER-OWNED MATERIALS AND TOOLING. Seller hereby expressly agrees to be responsible for and protect Buyer against any loss, damage, or expense to Buyer-owned materials, tools, dies, patterns, fixtures products, drawings or specifications while in the possession or control of Seller, with the exception of ordinary wear and tear. Title to Buyer-owned property shall remain in Buyer, and such property shall be used solely in the performance of work ordered by Buyer, shall be subject at all times to return or disposition as Buyer may direct, shall not be commingled with property of Seller or others, and upon demand shall be delivered forthwith to Buyer or its designee.

15. INDEMNIFICATION ON CONTRACT FOR SERVICES-INSURANCE. If Seller or its employees, agents or subcontractors are to perform services for Buyer on Buyer's premises or elsewhere, Seller agrees to defend, indemnify and save harmless Buyer and each of the Buyer Parties against any and all loss, damage or expense (including, without limitation, attorney fees) arising from Seller's negligence or Seller's manufacture and shipment of product which does not meet the requirements of this Agreement, to the extent of injury to person or property occurring in the performance of such services. Seller also agrees to furnish Buyer with a certificate of insurance evidencing public liability and workers compensation insurance covering Seller and its employees, agents and subcontractors. Seller shall prevent liens of any nature from attaching to the premises of Buyer or its customers, if labor or services in connection with this purchase order

are performed at any locations occupied or under control of Buyer, Seller agrees to indemnify and hold the Buyer Parties harmless from and against any liabilities, losses, damages, claims and expenses, including, without limitation, attorney fees, arising out of or related to the labor and services provided whether or not related to the conduct of Buyer's employees, agents or otherwise. Seller will maintain such public liability property damage and Workmen's Compensation insurance as will protect Buyer from any of said risks.

16. CANCELLATION WITH CAUSE. Buyer may cancel this order in whole or in part, if the products ordered hereunder of work specified fail to conform to the requirements of the Warranty, if Seller fails to make deliveries as specified by Buyer, or if Seller breaches or fails to perform any other term or condition of this order. Buyer may forthwith cancel this order if Buyer has good faith concerns about the insolvency of the Seller; the filing of a voluntary petition in bankruptcy by Seller; the filing of any involuntary petition to have Seller declared bankrupt; the appointment of a receiver or trustee for Seller; the execution by Seller of an assignment for the benefit of creditors; or where Buyer otherwise in good faith believes Seller may not have sufficient financial wherewithal to perform. In event of any such cancellation, Buyer without prejudice to any other rights available to it for breach of contract, shall have the right (a) to refuse delivery of products or performance of work; (b) to return to Seller products already received, to recover from Seller all payments made therefor including freight, storage, handling and other expenses; and to be relieved from liability for any future payments to Seller; (c) to recover any advance payments to Seller for undelivered or returned products or work to be performed; and (d) to purchase elsewhere and charge Seller with any resultant losses. No returned products shall be replaced without Buyer's written replacement order. Any cancellation hereunder (or as noted below) shall not excuse Seller from performing uncanceled work on this purchase order.

17. CANCELLATION WITHOUT CAUSE. Buyer reserves the right to cancel this order, in whole or in part, at any time, without cause or default of Seller and make changes in specifications or requirements. Seller shall, upon Buyer's request, immediately suspend shipments or products and performance of work. Buyer shall not be liable to Seller for any losses or lost profit on the cancelled portion of the order other than the reasonable and actual

out-of-pocket costs incurred by Seller which relate to product manufactured in reliance on firm purchase orders. Buyer shall not be liable to Seller or any third party for any overhead, administrative, loss-of-profit, special incidental or consequential damages. Also, Buyer shall not be liable for cancellations arising from causes beyond Buyer's reasonable control, such as floods, fires, court orders, strikes, work stoppages, energy or transportation shortages, or acts of governmental authorities. Seller shall not be paid for any work done after receipt of the notice of cancellation, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Seller shall not unreasonably anticipate the requirements of this order.

18. NON-WAIVER, ENTIRE AGREEMENT. This purchase order, as the same may be amended or modified in writing, and any documents related to or incorporated herein (including these terms), supersede all prior understandings, transactions, and communications, or writing with respect to the matters referred to herein. The failure of Buyer in any one or more instances to insist upon performance of any of the privilege hereunder, or the waiver of any breach by Seller of these terms or conditions shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no failure or waiver had occurred.

19. REMEDIES. The rights and remedies of Buyer set forth hereunder are not exclusive and are cumulative and in addition to all other rights and remedies provided by law. No provision of Seller's quotation, acknowledgment, invoice or other communication from Seller to Buyer shall in any way operate to modify, limit, or exclude any right or remedy of Buyer. The rights held by Buyer shall include the right to set off and reduce any amounts due or which become due from Buyer to Seller for any amounts which are due or become due by Seller to Buyer arising out of this transaction or any other dealings between Buyer and Seller.

20. INSURANCE. With respect to Seller's performance of the contract, Seller shall maintain the following insurance: (i) worker's compensation and employer's liability insurance as prescribed by applicable law with employer's liability limits of \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limit for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease (coverage to include all states endorsement,

voluntary compensation and stop gap coverage); (ii) commercial general liability insurance (CGL), which shall be at least as broad as the coverage provided by a standard form commercial CGL policy (ISO CG 00 01 12 07), with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage and a \$1,000,000 aggregate each for the general policy and the products completed operations hazard (this insurance must include the following features: (a) contractual liability coverage, (b) products and completed operations, and (c) broad form additional insured endorsement); (iii) automobile liability insurance covering all owned, non-owned, hired and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident (this insurance must include contractual liability coverage); and (iv) umbrella / excess insurance that provides at least as broad of coverage as the CGL policy and have minimum limits of \$5,000,000. The insurance policies required pursuant to this contract, except for worker's compensation, shall be endorsed to name Buyer and the other Buyer Parties (the "Additional Insured Persons") as additional insureds, or provide blanket additional insured status that covers the Additional Insured Persons as additional insureds. All insurance policies shall be with insurers that have a minimum A.M. Best Rating of A-VII and be either licensed or authorized to do business in the appropriate states. Seller shall upon request provide a copy of the policies of insurance or certificates of insurance, all of which shall provide that the policies may be canceled or modified only upon not less than thirty (30) days prior written notice to Buyer.

21. INTERPRETATION. The contract of sale is formed by Seller's acceptance of this purchase order, the sole and exclusive provision of which contract are Buyer's terms and conditions of purchase which shall control over any conflicting provisions. This contract shall be deemed to have been made and performed in DeKalb and Allen Counties, State of Indiana, United States of America, and any action arising out of it, any order or any transaction of product or service shall be governed by the laws of the State of Indiana applied to contracts for the sale of goods made and to be performed in that state by Indiana residents and without giving effect to conflict of law principles or any other law or principle which would apply the law of any other jurisdiction, and the U.N. Convention for the International Sale of Goods shall not apply. Any action or suit initiated by Seller arising out of or related to this contract shall be brought exclusively in any federal or state court located in or having jurisdiction over DeKalb or Allen

000213 Revision 1

County, Indiana, and Seller consents to exclusive jurisdiction and venue in such courts. Seller waives any claim that such a forum is inconvenient. **Buyer and Seller and each of the Buyer Parties hereby waive any right to trial by jury with respect to any dispute, suit, action or proceeding arising out of or relating to this contract, any order, or any transaction or product or service provided pursuant to any order, whether in contract, tort, warranty, strict liability or otherwise.**