



THIS PURCHASE ORDER  
IS SUBJECT TO THE FOLLOWING  
TERMS AND CONDITIONS:

1. **EXCLUSIVE TERMS** – Any acceptance of this Purchase Order is limited to the acceptance of the express terms and conditions contained herein. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer unless such variances are in the terms of the description and specification of the goods, prices, quantities, delivery schedules, or terms of payment, 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 Purchase Order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained on the reverse side of this document, attached to this document, or delivered by Buyer with this document. Additional or different terms and conditions or any attempt by Seller to vary in any degree any of the terms and conditions of this Purchase Order shall be deemed material and shall be rejected; however, this Purchase Order shall not operate as a rejection of Seller's offer unless this Purchase Order contains one or more of the variances described above.

2. **TAXES; SHIPMENTS; EXTRAS** – (a) All sales, use, excise or similar taxes applicable to this transaction shall be paid by Seller, except as specifically provided in this Purchase Order. All sales, use, excise or similar taxes to be paid by Buyer must be itemized separately in this Purchase Order and on invoices.

(b) Seller shall enclose a packing slip with each shipment. The packing slip shall indicate the contents of each container, excluding prices. On shipments without a packing slip, Buyer's count or weight shall be conclusive. Buyer's order number, Seller's name, packing slip number, piece number and other identification as Buyer shall require shall appear on all containers, invoices, correspondence, bills of lading and other shipping papers, and where Seller and shipper are not the same, the names of both shall be shown thereon. Seller shall not make any COD shipments unless requested by Buyer or issue drafts against this Purchase Order. Unless provided herein, no charge shall be made for boxing, crating, handling, carting, drayage, storage or other packing requirements. All goods shall be packed, marked and prepared for shipment in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for the particular goods and in accordance with the applicable delivery requirements, and (iii) adequate to insure safe arrival of the goods at the named destination. Seller shall mark all containers with the

necessary lifting, handling and shipping information. No partial or complete delivery shall be made prior to the delivery date shown on this Purchase Order, unless Buyer has given its prior written consent thereto, nor shall deliveries exceed the quantities specified. Unless provided otherwise in this Purchase Order, goods ordered shall be delivered on a DDP destination basis to Buyer's designated plant or plants. If, in order to comply with Buyer's required delivery date(s), it becomes necessary for Seller to ship by a more expensive method than specified in this Purchase Order, any increased transportation costs resulting therefrom shall be paid by Seller, unless the necessity for such rerouting or expedited handling has been caused by Buyer.

(c) Goods in excess of, or different from, those ordered by Buyer and unauthorized advanced shipments may be rejected by Buyer and returned, or held subject to Seller's disposal, at Seller's risk and expense. When part of an order is rejected, the acceptance or rejection of the remainder of the order shall be within Buyer's sole discretion.

3. **SPECIFICATIONS** – All goods ordered to Buyer's specifications must comply with specifications current as of the date of this Purchase Order, unless otherwise specified by Buyer.

4. **WARRANTY** – Seller warrants the goods delivered hereunder to be of merchantable quality, fit for the purpose intended, free from defects in labor, material and manufacture, and in compliance with any drawings or specifications incorporated or referenced herein and with any samples furnished by the Seller. Without Buyer's written consent, no materials may be substituted in lieu of those specified. All warranties shall run to Buyer, its successors, assigns, and customers and to the users of its products. Seller agrees that this warranty shall survive acceptance of the goods. Said warranties shall be in addition to any warranties of additional scope given to Buyer by Seller and those implied by law. This warranty shall remain in effect for a period of one (1) year from the date the goods are placed in operation at the end user's site.

5. **TITLE** – (a) Seller warrants good title to all the goods furnished by it hereunder, free of all liens, claims and encumbrances. Title to all of the goods shall pass to Buyer at the date payment for all or any portion of the goods is made. Said transfer of title shall in no way affect Buyer's rights to refuse the goods in case of non-conformity with the requirements for the goods as set forth in this Purchase Order.

(b) Title to all goods and materials for which payment has been made, whether or not the same has been incorporated in the goods, and title to all completed goods whether paid for or not, shall vest in Buyer, and in any case shall not be part of Seller's property or estate in the event Seller is adjudged insolvent or makes a general

assignment for the benefit of creditors, or if a receiver is appointed on account of Seller's insolvency, or if the Purchase Order is terminated. Notwithstanding the foregoing, Seller shall be responsible for and shall bear any and all risk for loss or damage to the goods until delivery thereof in accordance with the delivery provisions of the Purchase Order. Upon such delivery, Seller shall cease to bear the risk of loss or damage; provided however, that any loss or damage, whenever occurring, which results from Seller's nonconforming packaging or crating shall be borne by Seller.

(c) Any of the goods furnished hereunder for which title has passed to Buyer but which remains in the care and custody of Seller, or its subcontractors and any Buyer provided items, shall be clearly identified as being the property of Buyer and shall be segregated from Seller's property. In addition, title to materials or partially completed goods whose full costs are included in any cancellation charges shall pass to Buyer. Buyer shall advise Seller, in writing, of the disposition of such goods.

**6. LIQUIDATED DAMAGES** – (a) Buyer and Seller agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages that Buyer would incur if the goods are not delivered in compliance with this Purchase Order by the scheduled delivery date, and Seller shall pay to Buyer, as liquidated damages, and not as a penalty, the liquidated damages specified below (the "Delay Liquidated Damages").

(b) The Delay Liquidated Damages shall be computed as follows: In the event of delay in delivery of the Goods, Seller agrees to pay all reasonable charges to expedite delivery and Delay Liquidated Damages of the greater of \$150.00 or 0.05% of the total Purchase Order price per day of delay, whichever is greater, with a maximum liquidated damages of fifteen percent (15%) of the total order price. In the event the goods are not delivered within twenty-eight (28) days from the scheduled delivery date, Buyer will have the right to terminate this purchase order without penalty or any liability whatsoever upon written notice to Seller and will be entitled to (i) a refund of any amounts paid by Buyer to Seller and (ii) payment of the Delay Liquidated Damages.

(c) The Delay Liquidated Damages will be due and payable within five (5) business days after written demand by Buyer. Buyer may demand payment of Delay Liquidated Damages from time to time as they accrue without deferring to such time as the total Delay Liquidated Damages are known. Any Delay Liquidated Damages that remain unpaid after the expiration of such five (5)-day period shall bear interest at the rate of 1.5% per month or the highest rate allowed by applicable law, whichever is less. The maximum amount of Delay Liquidated Damages shall not include interest that accrues on the Delay Liquidated Damages. Notwithstanding the assessment of

interest, and in addition to other rights and remedies, Buyer shall have the right to offset the amount of any unpaid Delay Liquidated Damages plus interest against any amounts due or that may become due to Seller under the purchase order.

(d) It is understood that such delay in delivery can cause delays in the project with respect to which the goods are to be employed and such delays can result in liquidated or other damages to Buyer, as well as interference with the labor and materials scheduling for such project, and other adverse consequences. Buyer and Seller acknowledge that Buyer is issuing this Purchase Order in reliance on, among other things, the enforceability of this liquidated damages provision, including payment as and when due of the Delay Liquidated Damages. Accordingly, Seller will not claim, and hereby irrevocably waives any right to claim, in any litigation, arbitration or other proceeding that the Delay Liquidated Damages are a penalty or otherwise not enforceable in any respect in accordance with the terms hereof. If and to the extent that, notwithstanding the foregoing, any or all of the Delay Liquidated Damages payable hereunder are subsequently struck down as not representing a reasonable determination of Buyer's damages or otherwise prevented from being fully enforced as written, Seller shall thereafter be liable to Buyer for damages at law for any such delay or failure of performance.

**7. RIGHT TO OFFSET** – Buyer, without waiver or limitation of any rights or remedies of Buyer, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Seller in connection with this Purchase Order any and all amounts owed by Seller to Buyer.

**8. INSPECTION** – Unless otherwise specified all goods ordered will be subject to final inspection and approval at the end user's site, notwithstanding any payments or any inspection at source. Buyer may reject or require the prompt correction in place or otherwise of any goods which are defective in material or workmanship or otherwise fail to meet the requirements of this Purchase Order. Buyer may, in addition to any other rights it may have by law, prepare for shipment and ship the goods to Seller, require Seller to remove them, or direct their correction in place. The expense of any such action, including transportation both ways, as applicable, shall be borne by Seller. If Seller fails promptly to remove such goods or to proceed promptly to replace or correct them, Buyer may replace or correct such goods at the expense of Seller, including any excess costs. Seller shall not again tender rejected or corrected goods unless Seller discloses the former tender and rejection or requirement of correction. All work under this Purchase Order is subject to source and surveillance inspection by Buyer, agencies of the U.S. Government and Buyer's customer. Seller, without additional cost, shall provide all reasonable

facilities and assistance for the safety and convenience of such inspectors. At the time of inspections Seller shall make available to the inspectors copies of all drawings, specifications and process, preservation and packaging data applicable to the goods ordered herein.

**9. ADVERTISING** – Seller shall not, without the prior written consent of Buyer, in any manner advertise or publish the fact that Buyer has placed this Purchase Order.

**10. PATENT INDEMNITY AND USE OF PRODUCTS** – (a) Seller agrees to indemnify and hold harmless Buyer, its successors, assigns and users of its goods against loss, damage or liability, including costs and expenses (including attorneys' fees), which may be incurred on account of any suit, claim, judgment, or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any article or material hereunder, provided Buyer shall notify Seller of any suit instituted against it and to the full extent of its ability to do so, shall permit Seller to defend the same or make settlement in respect thereof.

(b) Seller hereby grants to Buyer the right and license without further consideration to utilize any of Seller's patents, inventions or information, embodied in, which form a part of or involves the use of the goods and/or services which are the subject matter of this Purchase Order.

**11. TERMINATION FOR DEFAULT & EXCUSABLE DELAYS** – (a) Time is of the essence with respect to this Purchase Order, and Buyer reserves the right to terminate all or any part of the undelivered portion of this Purchase Order in the event Seller fails to perform any of the provisions of this Purchase Order or fails to make progress so as to endanger performance of this Purchase Order in accordance with its terms, or if deliveries are not made within specified times. Buyer shall also have the right to terminate this Purchase Order or any part thereof if Seller becomes insolvent or if a bankruptcy petition is filed which is not vacated within thirty (30) days from the date of filing. (b) Except with respect to defaults of its subcontractors (including lower-tier subcontractors), Seller shall not be liable for damages if the delay or failure to perform this Purchase Order arises out of causes beyond the control and without the fault or negligence of Seller, such as acts of God or the public enemy, fires, floods, strikes, freight embargoes, or acts of the Government in either its sovereign or contractual capacity; but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without fault or negligence of either of them, Seller shall not be liable for damages suffered by Buyer. Seller must notify Buyer in writing within ten (10) days after the beginning of any such cause that may delay performance under the

Purchase Order.

(c) In the event Buyer terminates this Purchase Order in whole or in part as provided in this paragraph, Buyer, in addition to any other rights it may have by law, may procure, upon such terms and in such a manner as Buyer may deem appropriate, goods or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar goods or services; provided, however, that Seller shall continue the performance of this Purchase Order to the extent not terminated under the provisions of the preceding subparagraph.

(d) If after notice of termination of this Purchase Order under the provisions of this paragraph, it is determined that Seller's failure to perform this Purchase Order is due to causes beyond the control and without the fault or negligence of Seller or its subcontractors, such notice of default shall be deemed to have been issued pursuant to paragraph 9 of this Purchase Order entitled "Termination for Convenience," and the rights and obligations of the parties hereto shall in such event to be governed by said paragraph.

**12. SUSPENSION; TERMINATION FOR CONVENIENCE** – Buyer reserves the right to suspend this Purchase Order or any part thereof upon written notice to Seller. Seller shall immediately suspend performance to the extent specified in the notice and protect all work in progress, and shall immediately resume performance of the suspended portion of the Purchase Order upon receipt of the Buyer's written notification to do so. Buyer reserves the right to terminate this Purchase Order or any part thereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. After submission by Seller of reasonable justification therefor, Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus the actual direct costs of Seller resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Nothing in this provision shall limit Buyer's rights to terminate this Purchase Order for default of Seller.

**13. CHANGES** – Buyer reserves the right at any time to make changes to drawings, designs, and specifications, methods of shipment and packaging, quantities, schedules and place of delivery as to any material or work covered by this Purchase Order. Any claim by Seller for an adjustment must be asserted in writing by Seller to Buyer within ten (10) days after receipt by Seller of notification of the change. In such event, Buyer will provide an equitable adjustment in the purchase price and time of performance. Seller will not be entitled to any other remedy on account

of such change. Nothing herein, however, shall excuse Seller from proceeding with this Purchase Order as changed.

**14. ASSIGNMENT** – This Purchase Order may not be assigned in whole or in part without the written consent of Buyer. No subcontract shall be made by the Seller with any other party for furnishing any of the completed or substantially completed goods, spare parts, or work required by this Purchase Order without the prior written approval of Buyer.

**15. DIES, JIGS, TOOLS AND PATTERNS** – If the price to be paid is stated on the face of this Purchase Order to include special dies, jigs, tools and patterns used in the manufacture of the goods then such tools, etc., shall be and become the property of Buyer or its customers. They, and any other similar items furnished by Buyer, shall be kept in good condition and from time to time replaced by Seller without expense to Buyer, except that the actual cost of changes due to Buyer's change of design or specifications shall be paid for by Buyer, if such changes are made prior to the exhaustion of the useful life of the dies, jigs, tools or patterns changed. No dies, jigs, tools, patterns, or drawings supplied to Seller by, or otherwise belonging to, Buyer or its customer shall be used in the production, manufacture, or design of any goods other than those called for by this Purchase Order, except with the written consent of Buyer, nor shall goods furnished to Buyer's patterns, specifications, drawings, dies, or tools be furnished or quoted to any other person or concern. When such dies, jigs, tools, patterns or drawings belonging to Buyer or its customer, or any part thereof, are no longer required for Buyer's orders, they shall be disposed of as Buyer shall direct. Seller shall be liable for the loss of or damage to Buyer's and/or its customer's property while such property is in Seller's possession and until returned to Buyer and/or its customer.

**16. COMPLIANCE WITH STATUTES AND REGULATIONS** – (a) Seller warrants and certifies that in the performance of this Purchase Order, it will comply with all applicable statutes, rules, regulations, and orders of the United States, and of any state or political subdivision thereof, including laws and regulations pertaining to labor, wages, hours, and other conditions of employment, including, without limitation, the non-discrimination provisions of executive order 10925, as amended, applicable price ceilings, if any, and that the goods delivered hereunder shall be produced in compliance with the Fair Labor Standards Act. Seller agrees to indemnify Buyer for any loss Buyer may sustain by reason of Seller's failure to comply with the above statutes, rules, regulations and orders.

(b) Seller agrees that it shall not export, re-export, transfer or release any technology or software supplied by Buyer hereunder, or any direct product of any technology or software supplied by Buyer in connection with this

Purchase Order (hereinafter, "items"), except in full compliance with the U.S. Export Administration Regulations and all other applicable U.S. or other export laws and regulations, and in particular not to any prohibited party, to any prohibited country or for any prohibited end use. Seller shall obtain the written consent of Buyer prior to submitting any request to any U.S. government agency for authority to export, re-export, transfer or release any items.

**17. EFFECT OF INVALIDITY** – The invalidity in whole or part of any terms or conditions of this Purchase Order shall not affect the validity of any other terms or conditions.

**18. REMEDIES** – The remedies herein reserved to Buyer shall be cumulative, and additional to any other remedies in law or equity. No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach, or of such provision. Any waiver must be in writing and signed by an authorized representative of Buyer.

**19. RISK OF LOSS; IDENTIFICATION OF GOODS; INSURANCE** – The risk of loss for all goods ordered hereunder shall be borne by Seller until such goods are delivered to and received by Buyer at the place specified on the face of the Purchase Order. Goods ordered hereunder shall be deemed identified as goods to which this Purchase Order refers at the time such goods are actually in existence and in the possession of Seller, its successors, assigns or agents. Seller agrees to carry fire insurance and all other insurance necessary to protect Buyer from loss of goods in which Buyer has an interest or title while the same are in the custody or possession of Seller. Copies of policies or certificates of such insurance will be furnished to Buyer on request.

**20. KNOW HOW** – It is agreed that all information and drawings provided by Buyer to Seller relating to the design, engineering, manufacturing and other operations, processes and experiences for the manufacture of all goods included in this Purchase Order (herein called "Know How") is confidential to Buyer. Should Seller or any affiliate obtain any Know How, Seller agrees to keep such Know How confidential and shall disclose such Know How only to such personnel as necessary and only to the extent necessary to perform the work under this Purchase Order. Seller agrees to make all reasonable efforts and take all reasonable precautions to prevent any employees or personnel of Seller or its affiliates from making any unauthorized use or disclosure of such Know How. Seller agrees to return all such Know How to Buyer at the time of the final shipment of the goods under this Purchase Order or upon termination of this Purchase Order for any reason.

**21. CERTIFICATE OF CURRENT PRICING** – Seller certifies that the prices and delivery schedules reflected elsewhere in this Purchase Order are equal to or lesser than the prices and delivery schedules offered by Seller as of the date of this Purchase Order to their most favored

customer for the goods ordered for like quantities. In the event Seller reduces its price for such goods during the term of this Purchase Order, Seller agrees to reduce the prices hereof correspondingly.

**22. WAIVER OF LIENS** – Seller hereby waives its rights to any mechanic's or similar liens under any applicable statute or otherwise for work done or materials furnished in connection with the goods. Seller shall obtain from any subcontractor or materialman prior to the performance of any work on the goods or to the furnishing of any materials for the goods, a written waiver satisfactory to Buyer of such subcontractor's or materialman's right to any such lien and shall deliver such waiver to Buyer promptly upon receipt thereof. Seller shall reimburse Buyer for all costs and damages, including attorneys' fees, and any special, indirect, incidental or consequential damages incurred by Buyer in connection with or as a result of the existence or discharge of any such lien.

**23. INDEMNIFICATION; INSURANCE** – Seller shall indemnify and hold Buyer harmless against all expenses (including attorneys' fees), claims, damages, demands, losses or liabilities arising out of Seller's breach in the performance of this Purchase Order. In furtherance of the foregoing indemnity and not in limitation thereof, Seller agrees that: (a) Buyer shall be entitled to all incidental damages resulting from a breach by Seller, including, but not limited to, all expenses reasonably incurred in inspection, receipt, transportation, care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions incurred in effecting cover, and any other reasonable expense incident to a delay or breach by Seller; and (b) Buyer shall also be entitled to consequential damages resulting from a breach by Seller for any loss resulting from general or particular requirements and needs of Buyer of which Seller is aware at the time of executing this Purchase Order, and which reasonably cannot be prevented by cover or otherwise, and damages sustained by Buyer from any injury to person or property proximately resulting from any breach of this Purchase Order by Seller. This indemnification shall be in addition to the warranty obligations of Seller. Seller shall maintain such general liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability), workers' compensation and employer liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses, demands and expenses (including attorneys' fees). Seller agrees to submit to Buyer certificates of insurance evidencing such insurance coverage when requested by Buyer.

**24. LIMITATION ON BUYER'S LIABILITY** – In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for loss or damage arising out of or

in connection with or resulting from this Purchase Order or for the performance or breach thereof by Buyer shall in no case exceed the price allocable to the goods or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer hereunder must be commenced within one (1) year after the cause of action has accrued.

**25. APPLICABLE LAW; DISPUTES** – Any action to enforce or interpret the terms of this Purchase Order or arising out of this Purchase Order shall be brought and maintained exclusively in the principal trial court in the state and county in which Buyer's principal offices are located or in the Federal District Court for the District in which Buyer's principal offices are located. Buyer and Seller each irrevocably submits to the exclusive jurisdiction of the aforesaid courts and agrees not to commence any action, suit, or proceeding except in such courts. Buyer and Seller irrevocably and unconditionally waive, and agree not to assert, by way of motion or as a defense, counterclaim, or otherwise, in any action or proceeding arising out of or relating to this Purchase Order (a) any claim that is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure lawfully to serve process, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts, and (c) to the fullest extent permitted by law, that (i) the suit, action or proceeding in any such court is in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper, or (iii) this Purchase Order, or the subject matter hereof, may not be enforced in or by such courts. The laws of the state in which Buyer's principal offices are located, other than the conflict of law provisions, shall govern the formation, performance and construction of this Purchase Order. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Purchase Order.

**26. ENTIRE AGREEMENT** – This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof. This Purchase Order may be amended only in a writing signed by authorized representatives of the parties. No course of prior dealings between Buyer and Seller and no usage of trade shall be relevant to supplement any term used in this Purchase Order. Acceptance or acquiescence in a course of performance rendered under this Purchase Order shall not be relevant to determine the meaning of this Purchase Order, even though the acquiescing party has knowledge of the nature of the performance and opportunity for objection.