

TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE.** These Terms and Conditions of Purchase and all documents referenced herein (collectively, the "Order") is an offer by [X] ("Buyer") to purchase the goods ("Goods") and/or services ("Services") and together with the Goods, the "Deliverables") described in Buyer's purchase order from the person or entity to whom the purchase order is addressed ("Seller"). Acceptance is limited to the terms of the Order. The Order is the only terms and conditions which govern the purchase of Deliverables by Buyer and supersede all prior and contemporaneous terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of the Order is hereby deemed material and objected to and rejected. No terms of any document or form submitted by Seller shall be effective to alter or add to the provisions contained in the Order. Unless otherwise stated herein, Seller's acknowledgment of the Order, shipment of Goods or commencement of any Services shall constitute acceptance by Seller of the Order.
2. **PRICES.** The prices are the lower of Seller's prevailing prices or as stated on the Order and are otherwise fixed, firm and not subject to increase. Unless otherwise expressly agreed by Buyer in writing, the price includes all taxes (sales, use, excise, privilege, ad valorem, and other taxes, duties, tariffs and assessments now or hereafter imposed or levied) and charges for packing, hauling, storage and transportation to Buyer's designated point of delivery. Any price reduction subsequent to the Order but prior to payment will be applied to the Order. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order. Forecasts, estimates and similar projections of Buyer are not purchase commitments. Buyer shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, work in process or raw materials, not expressly covered by an Order issued by Buyer. If Seller sells or offers to sell any goods or services of the same or similar type as the Deliverables at a lower price and/or on more favorable terms or conditions to any other person or entity, Seller shall provide written notice to Buyer, whereupon Buyer shall have the option to have such more favorable price, terms and/or conditions applied to this Order and Orders thereafter.
3. **PAYMENT TERMS.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery of Goods or Services. Buyer shall pay all properly invoiced amounts due to Seller within [45] days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.
4. **DELIVERY.** Time is of the essence. Unless otherwise agreed by Buyer in writing, all shipments are [DDP] Buyer's designated facility (Incoterms 2010) and title and risk of loss/damage shall pass to Buyer at such time and place. The Order must be shipped complete for delivery by the date requested. Seller shall deliver Goods in the quantities and on the date(s) specified in the Order. Buyer shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Buyer's option, be returned to Seller, or held for disposition, at Seller's expense and risk.
5. **WARRANTIES.** Seller warrants that (I) all Deliverables are and will be (a) in full conformity with specifications, drawings, samples, quantities, delivery schedules, and descriptions furnished or specified by Buyer; (b) free from defects in material, workmanship and design, (c) merchantable and fit and sufficient for the purposes intended; (d) free and clear of all liens, Claims, security interests or other encumbrances; (e) free of claims of infringement or misappropriation of any third party's intellectual property rights; and (f) produced or provided in compliance all applicable foreign, federal, provincial, state, and local laws and regulations as well as requirements and standards applicable to the Deliverables [including without limitation REACH, RoHS and Prop. 65] ("Laws"); and (II) Seller shall (a) comply with all applicable Laws and Buyer's prime contract (if any); and (b) refrain from engaging in any illegal, unethical, or deceptive practices. All warranties shall survive inspection, testing, delivery, acceptance, termination and payment and failure to inspect, test or discover any defect or other nonconformance. These warranties shall be in addition to all other warranties, express, implied or statutory. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.
6. **INSPECTION.** All Deliverables are subject to inspection and testing by authorized representative(s) of Buyer and/or Buyer's customers at all reasonable times and places, including during production. Buyer reserves the right to reject or revoke acceptance, in whole or in part, of Goods which fail to meet any requirement of the Order, notwithstanding inspection, testing, delivery, acceptance and/or payment and such Goods may, at Buyer's option, be returned to Seller at Seller's cost or held for disposition at Seller's risk and expense.
7. **INDEMNIFICATION.** Seller, shall defend, indemnify, and hold Buyer, its affiliates and their respective officers, directors, members, managers, shareholders, employees, customers, successors and assigns, harmless against any and all claims, demands, damages, losses, liabilities, lawsuits, dispute resolution, judgments, fines, settlements, penalties, costs and expenses including without limitation all attorneys' fees and litigation costs and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, whether direct, indirect, incidental, consequential, or otherwise (collectively, "Claims") arising out of relating to (i) the Deliverables (including death, injury and property damage); (ii) actual or alleged act, omission, negligence or failure to comply with the Order or any other agreement between Buyer and Seller; (iii) any Recall; (iv) actual or alleged infringement or misappropriation of any IP Right; (v) loss or damage to Buyer's Property; and (vi) Seller's breach of the Order. Seller shall not enter into any settlement without Buyer's prior written consent. This indemnification is in addition to the warranty obligations of Seller.
8. **INTELLECTUAL PROPERTY.** Seller represents and warrants that the manufacture, sale, performance and use of the Deliverables will not infringe any patent, copyright, trademark, trade secret, know how or other intellectual property or proprietary right ("IP Right"). If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing goods of equal quality and performance.
9. **INSURANCE.** Seller shall obtain and at all times in which the Order is in effect and for no less than two (2) years thereafter, maintain at its cost insurance as designated by Buyer from time to time, but no less than insurance with insurers having a current A.M. Best rating of "A- VIII" or better: (1) primary comprehensive or commercial general liability insurance with limits of at least \$2 million per occurrence combined single limit for bodily injury and property damage with a \$2 million products-completed operations aggregate and a \$2 million general aggregate, including coverage for: (i) Products and Completed Operations liability; (ii) Blanket Contractual liability; and (iii) Cross Liability endorsement or Severability of Interest clause. Insurance required shall: (1) be endorsed to insure Buyer, its officers, directors, employees, representatives and agents as additional insureds; (2) be endorsed to waive any rights of subrogation against Buyer; (3) provide contractual liability coverage to Seller for its indemnity obligations; and (4) be endorsed to provide that such insurance is primary to and non-contributory with any other insurance obtained by, for or on behalf Buyer notwithstanding any "other insurance" provision contained within such policies. Seller shall provide written notice to Buyer no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage. Prior hereto and at any time upon reasonable request, Seller shall provide certificates of insurance to Buyer along with other documentation as may be reasonably required by Buyer to evidence the insurance coverages required herein. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer.
10. **CHANGES.** No change to any Order is binding upon Buyer unless it is in a signed writing, and specifically states that it amends such Order. Buyer shall have the right at any time to make changes in drawings, specifications, quantities, materials, packaging, time and place of delivery, and method of transportation, and cancel an Order, in whole or in part, without liability. If any such changes result in an increase or decrease in the cost or the time required for performance, an equitable adjustment may be made by Buyer or Buyer may, at its option, terminate an Order if agreement on an adjustment cannot be reached. Claims for adjustment must be asserted by Seller within ten days of the change order. Seller agrees to accept any such changes.
11. **RECALL.** In the event that Buyer determines, in Buyer's sole discretion, that any defect, nonconformance or deficiency in any of the Goods requires a field campaign, recall, similar or other action ("Recall") to repair, replace or remediate any Goods or any of Buyer's products in which Goods are incorporated, Seller shall be liable to Buyer and its customers for all damages, costs and expenses with regard to the foregoing including, without limitation, attorneys' fees and court costs.
12. **FORCE MAJEURE.** Buyer shall not be liable for failure to take delivery of the Goods or to allow performance of the Services or to otherwise perform hereunder if such failure or inability is due to causes beyond Buyer's control.
13. **TERMINATION.** Buyer may terminate any Order, in whole or in part, without liability to Buyer at any time, if (i) Seller breaches the Order or fails to deliver the Goods or to perform the Services by the specified time; (ii) a petition initiating a proceeding under any applicable Law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller; (iii) Seller is insolvent or executes an assignment for the benefit or creditors; (iv) a receiver is appointed for Seller or any substantial part of its assets; (v) Buyer is insecure with respect to Seller's ability to perform and Seller is unable to provide Buyer with adequate assurance of its ability to perform within five days after Buyer's request therefore; or (vi) Buyer provides no less than [X] days' written notice to Seller. Buyer's rights and remedies are cumulative, not exclusive and in addition to its rights and remedies at law, in equity or otherwise. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination. Upon receipt of notice of any termination, Seller shall, unless the notice directs otherwise, immediately discontinue all work.
14. **PROPERTY.** Title to and right of immediate possession of any property, including, without limitation, patterns, tools, jigs, dies, equipment and materials ("Buyer's Property") furnished or paid for by Buyer shall be and remain the sole property of Buyer. No articles made therefrom shall be furnished by Seller to any other person or entity without Buyer's prior written consent. Seller shall be responsible for maintaining adequate records and maintenance and protection of Buyer's Property and shall return Buyer's Property to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain Buyer's Property and acknowledges that its obligation to return Buyer's Property upon demand is unconditional.
15. **AUDIT.** Buyer and its designees shall have the right to audit and inspect Seller and Seller's suppliers records and facilities to determine Seller's and its supplier's compliance with the Order.
16. **NOTICES.** All notices to Buyer be given in writing and will be effective upon personal delivery, on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or two business days after deposit if sent by a nationally recognized courier service which maintains evidence of the time, place and receipt of delivery, and in each case if addressed as set forth in the Order (or such other addresses a party may designate in writing from time to time).
17. **INFORMATION.** All information, documents, specifications, suggestions, comments and data ("Information") heretofore or hereafter furnished or disclosed by Buyer to Seller is and shall remain the confidential and proprietary information of Buyer and shall be maintained in strict confidence and only used for purposes of fulfilling an Order. Further, Seller shall not in any manner advertise or publish the fact that it has furnished Buyer, or contracted to furnish Buyer, any Deliverables without the prior written consent of Buyer. BUYER MAKES NO WARRANTY WITH RESPECT TO INFORMATION. ANY IMPLIED WARRANTIES THAT MAY EXIST WITH RESPECT TO ANY INFORMATION PROVIDED BY BUYER, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED.
18. **INVOICES.** The parties agree that for any transactions, facsimile signatures shall be accepted as original signatures, orders may be transmitted electronically and any document created pursuant to an Order may be maintained in electronic format; a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of any Order nor any document created thereto, based on the use of a facsimile signature, electronic order or the use of an electronic copy.
19. **MISCELLANEOUS.** All waivers by Buyer shall be in writing. No delay or omission in the exercise of any right, power, or remedy of Buyer hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein. Seller shall not assign any Order or any monies due or to become due from Buyer without Buyer's prior written consent. The Order shall be construed in accordance with the laws of [STATE], without regard to any rules on conflicts of laws. In case any one or more provisions contained in an Order shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Provisions which

by their nature should survive will remain in force after any termination or expiration. The section headings contained herein are not part of the Order and are included solely for the convenience of the parties. If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Order or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of the Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Order.