

PURCHASE ORDER

TERMS AND CONDITIONS

1. **TERMS AND CONDITIONS OF PURCHASE.** This purchase order (the "Order"), together with any written supply agreement, if any, constitutes the entire agreement between Buyer and Seller and supersedes any and all prior or contemporaneous agreements, representations, and understandings with respect to the goods described on the face hereof (the "Goods"). Any additional or different terms and conditions in Seller's acknowledgment, invoice, or other response hereto are rejected and shall be of no effect unless expressly assented to in writing by Buyer. In the event of any conflict or discrepancies among the provisions typed on the face of this Order, the provisions in any attachment to this Order and any provision set forth in these Terms and Conditions, the order of precedence in resolving such conflict or discrepancies shall be: (1) the written supply agreement, (2) the Order face and (3) these Terms and Conditions.

2. **ACCEPTANCE.** The written acceptance of this Order by Seller, the shipment of any Goods, the commencement of any work, or the performance of any services hereunder by Seller, shall constitute acceptance by Seller of this Order.

3. **QUANTITY.** Buyer shall be obligated to purchase and accept only the quantity of Goods described herein, and any Goods received in excess thereof may, at Buyer's option, be returned to Seller at Seller's expense. If an event of force majeure diminishes the quantity of available Goods, Seller shall provide Buyer with at least the portion of Goods available that Buyer would receive under a fair and equitable allocation among Seller's other customers with written contracts. Unless otherwise specified in the Order, a ton shall be understood to be two thousand (2,000) pounds, a gross ton two thousand two hundred forty (2,240) pounds and a metric ton two thousand two hundred forty point six (2,204.6) pounds. Buyer's determination of the weight of Goods received shall govern for all purposes related to this Order.

4. **PAYMENTS.** Unless otherwise specified on the face of the Order, the price and all charges and payments under this Order are payable in U.S. dollars. The prices shown on the face of this Order are firm and fixed unless otherwise agreed to in writing by Buyer. Buyer shall receive the benefit of any general reductions in Seller's prices prior to delivery and in no event shall Buyer be charged higher prices than Seller's other similar customers who take delivery in substantially the same amounts. Unless otherwise noted herein, Seller is responsible for the prompt payment of all applicable federal, state and local taxes in effect at the time of sale hereunder. Seller also agrees to indemnify and hold Buyer harmless against any claim therefrom and shall detail such taxes, apart from the price of the Goods, on all invoices submitted. Buyer shall not pay charges for packing, crating, freight, express, cartage, or other costs unless specified on the face hereof. No additional charges of any kind, including but not limited to late charges or interest, will be allowed unless specifically agreed to by the prior written agreement of Buyer. Buyer shall be entitled to setoff any claim which Buyer has against Seller against any claim which Seller has against Buyer.

5. **INVOICES.** Unless otherwise required by Buyer, invoices shall: (a) specify Buyer's order or release number; (b) be rendered separately for each delivery and indicate whether it is a "Partial Billing" or "Final Billing"; (c) cover not more than one Order; (d) clearly identify the Goods covered; and (e) include proper support documents and the original bill of lading or a signed delivery receipt. If an invoice relating to this Order is subject to a discount, the discount period will be calculated from the date the invoice is received by Buyer, except that the discount period will be extended by the number of days of delay caused by errors in any invoice requiring correction.

6. **PACKAGING AND SHIPMENT.** Each delivery of Goods to Buyer shall: (a) be numbered and labeled with Buyer's order number, stock number, contents and weight, (b) contain an itemized packing slip, (c) be properly packed, marked and shipped in such manner as will meet the requirements of a common carrier, provide for efficient handling and insure adequate protection against damage to the Goods, and (d) be shipped and routed in accordance with Buyer's instructions. Unless otherwise specifically instructed, shipments via limited liability carriers (air freight, UPS, etc.) and those subject to released value ratings shall be declared at the value which will secure the lowest transportation charge. Seller shall reimburse Buyer on demand for all expenses incurred by Buyer as a result of improper packing, marking or routing. Seller shall forward an original bill of lading or a signed delivery receipt with Seller's invoice as evidence of shipment. If the Goods or any part thereof are not delivered within the time or times specified in this Order (or within a reasonable time if no time is specified), Buyer may, at its option, (i) refuse to accept such Goods and terminate this Order or (ii) require Seller to ship such Goods by the most expeditious means of transportation and any costs of such transportation in excess of the cost of the method which would have otherwise been used shall be the responsibility of Seller. Final inspection, testing and acceptance of the Goods shall be at Buyer's plant or other places designated by Buyer in writing.

7. **WARRANTY.** Seller warrants that all Goods sold hereunder shall be merchantable, free from defects in material and workmanship and shall conform to the specifications set forth in this Order. If Seller designs or manufactures any Goods specifically for Buyer, Seller also warrants that such Goods will be fit for the particular purposes intended by Buyer. Neither Buyer's approval of Seller's proposed design, product specification, test plans and/or procedures, manufacturing processes, methods, tooling or facilities, nor Buyer's inspection, failure to inspect, acceptance of delivery, payment or use of the Goods described herein, shall relieve Seller of any of its obligations hereunder. All warranties shall inure to the benefit of and be enforceable by Buyer, its affiliates, and its assignees.

8. **CONFORMITY OF GOODS.** Seller shall repair or replace any Goods (a) which fail to conform to the specifications set forth in this Order, (b) which otherwise prove to be defective within the latest of one year of the date of shipment or any warranty period on the face hereof, or (c) which otherwise are in breach of the foregoing warranties or of any other provision of this Order. In the event of the failure of Seller promptly to repair or replace any of the foregoing described Goods, Buyer, after reasonable notice to Seller, may make such corrections or replace such Goods and charge Seller for the cost of such corrections or replacements incurred by Buyer. Buyer reserves the right to reject any Goods which fail to conform to any instruction, specification or description in this Order, and such Goods shall be returned to Seller at Seller's sole expense. Any dress, turnings or other Goods purchased hereunder that are not dry, tarped or otherwise protected from moisture from any source shall be considered non-conforming Goods and may be rejected by Buyer.

9. **COMPLIANCE WITH LAWS.** Seller represents and warrants that it is in compliance with all applicable laws, rules, and regulations that affect this Order. Seller represents and warrants that it complies with (a) Executive Order 11246, as amended, relating to equal employment opportunities, the implementing regulations and rules, and all applicable contract clauses and requirements; (b) the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974, the implementing regulations and rules, and all applicable contract clauses and requirements; (c) Public Law 95-507 and Executive Orders 11625 and 12138 relating to the utilization of small and minority business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and women-owned business concerns; and (d) the implementing regulations and rules of the General Services Administration and all contract clauses and requirements that are applicable and set forth therein are incorporated herein by reference. Seller shall comply with all other federal and state laws and regulations prohibiting discrimination in employment, including, but not limited to, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. Seller certifies that it does not maintain segregated facilities and adopts hereby each and all of the provisions of the approved form of certification contained in 41 CFR §60-1.8(b)

10. **DEFAULT.** Each of the following events shall constitute a default by Seller for purposes of this Order: (a) Seller's adjudication of bankruptcy or insolvency, or its inability to pay its debts as they mature, or its making an assignment for the benefit of creditors; or its application for or consent to the appointment of a receiver, trustee, or similar officer for it or for all or any substantial part of its property; or the appointment of such receiver, trustee, or similar officer without the application or consent of Purchaser, or its institution of any bankruptcy, insolvency, reorganization, arrangement, readjustment or similar proceeding, or any dissolution, liquidation, or similar proceeding relating to it under the laws of any jurisdiction, or the institution of any such proceeding against Purchaser; (b) refusal or failure of Seller to deliver the Goods in accordance with the delivery schedule specified herein, or within a reasonable time if no time is specified; (c) failure by Seller to make progress so as to endanger performance of this Order in accordance with its terms; (d) failure by Seller to perform any other provision of this Order. In the event Seller does not cure any default within a period of ten (10) days after notice thereof, or such longer period as Buyer may authorize in writing, then Buyer may, by written notice to Seller, terminate this Order or any part thereof. Buyer shall not be liable to Seller for payment of any amount other than for the price of any partial shipment of Goods received and accepted by Buyer, and Seller shall be liable to Buyer for any and all damages sustained by Buyer by reason of the default which gave rise to the termination. Upon notification of termination Seller shall protect all property in its possession in which Buyer has an interest, shall terminate all work and commitments made under or

pursuant to this Order as quickly and effectively as possible and shall provide written proof to Buyer that such termination has been accomplished in a timely manner. Buyer shall pay Seller that percentage of the price corresponding to the percentage of the work performed prior to the notice of termination less all amounts previously paid plus actual direct costs reasonably necessitated by the termination. Seller shall not be paid for any work done after receipt of notice of termination, for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided, or for any other amounts not explicitly provided for in this section. Seller shall, if so directed by Buyer, ship to Buyer all Goods for which Buyer shall have paid. If Buyer is required to employ an attorney to enforce or defend its rights hereunder, Buyer shall be entitled to recover its costs from Seller, including but not limited to, its reasonable attorneys' fees.

11. **HAZARDOUS SUBSTANCES.** Seller shall notify Buyer in advance of shipment or at any other time it becomes known if the Goods to be furnished are or could be considered hazardous or dangerous. Seller shall advise Buyer of the hazards associated with the handling, use, storage or disposal of the Goods and/or any by-products thereof, and shall furnish Buyer with copies of all relevant information concerning the physical, chemical and toxicological properties of the Goods, and emergency steps to be taken in the event of a health, safety, or environmental incident involving the Goods. Seller expressly warrants that the Goods are free of any radioactive material or other hazardous substances.

12. **INDEMNIFICATION.** Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates, assignees, officers, directors, employees, agents and representatives from and against any liability, claim, loss, demand, damages, cost and expense (including attorneys' fees and litigation costs) caused by, resulting from or attributable to (i) defective material or workmanship in any Goods sold hereunder, (ii) Seller's breach of this Order, or (iii) Seller's failure to reasonably provide information or assistance required hereunder. If Seller's employees or other representatives enter upon premises occupied by or under control of Buyer or any of its customers or suppliers in the course of the performance of this Order, Seller shall take all necessary precautions to prevent the occurrence of injury or death to any person or damage to any property arising out of any acts or omissions of such employees or other representatives. Unless any injury or damage is due solely and directly to Buyer's negligence, Seller agrees to indemnify, defend and hold harmless Buyer, its affiliates, assignees, officers, directors, employees, agents and representatives from and against any liability, claim, loss, demand, damage, cost and expense (including attorney's fees and litigation costs) relating to any claim of injury or damage of any kind to any person or property asserted to be caused by, resulting from or attributable to any act or omission of Seller, its employees, or other representatives. All risks whatsoever, including but not limited to the risk of loss or damage to Goods or material at all times prior to actual delivery at Buyer's plant or other final point of destination specified in this Order shall be borne by Seller.

13. **LIMITATION ON LIABILITY.** BUYER'S LIABILITY IN CONNECTION HERewith SHALL BE LIMITED TO THE VALUE OF THE GOODS TENDERED TO BUYER. THE PARTIES AGREE THAT IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF PROFIT OF ANY KIND OR OF ANY OTHER NATURE BY REASON OF ALLEGED BREACH OR DEFAULT UNDER THIS ORDER NOR SHALL BUYER BE LIABLE FOR SELLER'S COURT COSTS OR ATTORNEYS FEES.

14. **PATENT INFRINGEMENT.** Seller agrees to indemnify Buyer, its successors, assigns, agents, users and purchasers of its products from and against any liability, and, in addition, from and against any loss or damage, 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, copyrights, or unauthorized use of trade secrets or proprietary information in the manufacture, use or disposition of any article or material supplied or sold hereunder or the use of any process in the performance of this Order. If Buyer so requests, Seller shall defend or settle at Seller's sole expense any suit or proceeding against Buyer alleging such infringement. Buyer may assume its own defense in any such suit or proceeding in which event the foregoing indemnity and agreement to hold Buyer harmless shall extend to all of Buyer's costs therein, including attorneys' fees and litigation costs.

15. **INFORMATION.** Seller shall provide to Buyer or its agents any information pertinent to this Order and shall allow Buyer and its agents to have access to Seller's facilities or the facilities of Seller's subcontractor(s) or supplier(s), if any, at all reasonable times, in order for Buyer to inspect the Goods. Seller shall, for a period of two years after the date of shipment of the Goods sold hereunder, retain all documents which relate to the type and quality of the material used in its performance under this Order and shall upon reasonable notice make those documents available to Buyer for inspection and copying.

16. **CONFIDENTIALITY.** Seller agrees that all information provided by Buyer to Seller, and all information becoming known to Seller concerning Buyer's inventions, discoveries, improvements or methods, business plans, customer or supplier information, practices, manufacturing, plant design or any other information affecting the business operations of Buyer, including the specifications or description of the Goods relating to this Order, ("Buyer's Proprietary Information") shall be maintained strictly confidential by Seller and shall not be published, disseminated, revealed in any manner or to any party or used in the production, manufacture, sale or operation of any other article, material, plant, business or the performance of services without first obtaining Buyer's written consent thereto, except in the performance of work under this Order; provided, however, that the provisions of this paragraph as they relate to confidentiality shall not apply to Buyer's Proprietary Information which Seller can show was known to Seller at the time same was obtained directly or indirectly from Buyer, or is acquired by Seller from a third party and such third party did not obtain such information directly or indirectly from Buyer under obligation not to disclose, or is or becomes published or otherwise in the public domain other than by violation of the conditions of this Order by Seller. Seller shall be fully responsible for all of Buyer's Proprietary Information in Seller's possession, and Seller shall promptly upon completion of work or services or on demand, return all documents containing Buyer's Proprietary Information and reproductions therefrom to Buyer.

17. **FORCE MAJEURE.** Time is of the essence to Buyer. However, neither party shall be liable for any delay or inability in performing its obligations hereunder if immediate notice is given thereof and if the delay or inability is due to an unforeseeable event beyond the reasonable control of such party, such as but not limited to acts of God, fire, flood, storm, explosion, riot, war, strike or other labor troubles, government orders, regulations or any other circumstances of like or different nature. Whenever any event occurs or threatens to occur which might delay the timely performance of this Order, Seller shall immediately notify Buyer and if such notification is not in writing shall promptly confirm such notification in writing. Any extension of time granted to Seller pursuant hereto shall be Seller's sole and exclusive remedy for any claim resulting from a delay caused by these occurrences.

18. **ASSIGNMENT.** Seller may not assign performance of all or any portion of this Order without the prior written consent of Buyer, the giving or withholding of which is in Buyer's sole and absolute discretion.

19. **REMEDIES.** Termination by Buyer shall not prejudice any claim for damages or non-performance Buyer would otherwise have against Seller. The rights and remedies of Buyer set forth in this Order are not exclusive and are in addition to all other rights and remedies of Buyer, including but not limited to all rights and remedies granted Buyer under the Uniform Commercial Code.

20. **AMENDMENT.** No claim of waiver, modification, supplement, amendment, consent or acquiescence with respect to any provision of this Order or the transactions contemplated hereunder shall be made against Buyer hereto except on the basis of a written instrument executed by or on behalf of Buyer.

21. **SEVERABILITY.** If any provision of this Order shall for any reason and to any extent be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, but rather the invalid or unenforceable provision shall be modified to the extent necessary so as to render such provision valid and enforceable to the greatest extent possible accomplishing the intended purpose of said provision.

22. **MISCELLANEOUS.** The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed to be a waiver of any further right hereunder. This Order shall be governed by and construed in accordance with the laws of the State of Ohio without regard to principles of conflicts of laws. Any litigation arising under or related to this Order shall be conducted in Cuyahoga County, Ohio, and the courts of Cuyahoga County, Ohio shall have personal jurisdiction over Seller to hear all litigation arising out of this Order, and venue shall be proper with such courts to hear such litigation. Any action of any kind against Buyer by Seller must be commenced within one year from the date such right, claim, demand or cause of action shall have first accrued, otherwise such right, claim, demand or cause of action shall be barred.