

Standard Terms & Conditions of Sale

- 1. Exclusive Warranty - Goods manufactured by Seller** – Seller warrants to the original Buyer that its new goods are free from defects in materials and workmanship. Seller warrants rated performance of its new goods provided that such goods are used and maintained in accordance with the conditions set forth in the contract documents, including, but not limited to, the operating and maintenance manuals, and installation and use criteria set forth in specifications which are a part of this Agreement, or if there are none, under good operating, maintenance and use conditions. Seller's obligation under this warranty is limited to the repair, or, at Seller's option, the replacement of new equipment within twelve (12) months of delivery to the original Buyer, or the replacement of spare parts within ninety (90) days of delivery to the original Buyer, returned FOB to Seller's plant of manufacture, and which, after examination, appear to Seller's satisfaction to be defective under this warranty. All costs of shipping, insurance, and risk of loss arising in connection with performance of this warranty shall be borne by Buyer. **Components purchased by Seller** – Seller shall attempt to obtain, in its subcontracts with each supplier of components not made by Seller, a provision that the subcontractor's standard warranty, if any, shall survive Seller's inspection, acceptance, and payment, and shall run to Seller, its successors, assigns, and customers. **Designs** – Seller warrants to the original Buyer of its designs that such designs satisfy criteria and specifications set forth in the contract documents. Seller's obligation under this warranty is limited to redesign if, within twelve (12) months after delivery of new equipment, or ninety (90) days for spare parts, to the original Buyer, Buyer demonstrates to Seller's satisfaction that said design criteria and specification were not satisfied by Seller's design. If Seller manufactures the goods in accordance with Buyer's specifications, Seller shall have no liability whatsoever for defects in design or failure of performance of the goods. **Technical Assistance** – Seller warrants that services shall be provided in a professional manner. Seller's obligation hereunder is limited to the providing of services by its employees or agents at the time and place, and to the extent specified in this Agreement. THERE SHALL BE NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY BEYOND THE EXPRESS TERMS OF THIS AGREEMENT UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY AN OFFICER OF SELLER. SELLER DOES NOT WARRANT ITS GOODS AS TO THEIR FITNESS FOR ANY SPECIAL USE OR FUNCTION OR AS TO THEIR LIFE AFTER SALE TO BUYER AND/OR TO SUBSEQUENT BUYERS OR USERS OF THE GOODS. There are no warranties, express or implied, arising from course of dealing, course of performance, or usage of trade which extend beyond the face of this Agreement. Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its goods. Seller has no responsibility whatsoever for reimbursing Buyer, its customers or users of the goods, nor shall Seller be liable in damages for repair or replacement costs incurred by Buyer, its customers or users of the goods in connection with the goods or parts thereof, without Seller first having given its written authorization for such charges and without Seller having an opportunity to perform its warranty obligations as hereinabove set forth. Seller's warranties as hereinabove set forth shall not be enlarged or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical assistance or service in connection with the goods furnished hereunder. The limitations set forth herein shall not be affected by the failure of the repair and replacement remedy provided hereinabove. In no event shall Buyer, its successors, assigns, customers or users of the goods commence any action against Seller arising out of the sale, delivery or use of the goods and regardless of the form of the action (whether in contract or tort) later than one (1) year after the cause of action has accrued. Buyer's assertion of any rights under this warranty provision shall be in writing and shall specify with particularity the alleged defects in the goods.
- 2. Damages** – Seller shall not be liable for any exemplary, indirect or consequential damages (including loss of goodwill, revenues or profits) suffered by Buyer, any customer of Buyer or any user of the goods resulting from the nondelivery, use or inability to use the goods, integration of the goods with equipment not provided by Seller and/or from any other cause whatsoever, even if Seller has been advised of the possibility of such damage. Seller's maximum total liability under this Agreement for actual, exemplary, incidental, proximate and/or consequential damages or expenses arising from any breach or breaches of warranty or failure to deliver the goods in conformance with this Agreement (regardless of the form of action, whether in contract or in tort) shall not exceed the lesser of: (i) the amount Buyer has paid to Seller for the goods, or (ii) the amount of Buyer's actual damages, or (iii) in the case of property damage or personal injury, the amount of such damages covered by Seller's liability insurance, and the period of such liability shall not extend beyond the warranty period under this Agreement. Buyer's remedies and measure of damages as set forth in this Agreement shall be exclusive.
- 3. Price** – Unless otherwise specified, price includes domestic packaging and crating charges, and transportation to the specified FOB point. Buyer will pay any additional transportation charges. Prices do not include any federal, state, or local taxes, assessments, or import duties applicable to the sales, ownership, production, transportation or use of goods sold. Any such tax or duties shall be separately itemized on Seller's invoice and paid by Buyer, or, in lieu thereof, Buyer shall furnish Seller with a valid tax exemption certification in the event Seller is required to pay such tax or assessments. Buyer shall reimburse Seller upon demand, plus interest on such amount at the rate of ten percent (10%) per annum from the date paid by Seller. Seller shall be under no obligation to contest the validity of any such tax or assessments or to prosecute any claims for refunds or returns. Any personal property taxes or similar taxes or assessments against the goods or on account of materials segregated for the Buyer and being held by the Seller at Buyer's request shall be paid by Buyer.
- 4. Shipments and Packaging** – Unless otherwise agreed in writing, all shipments shall be EX WORKS Seller's plant or plants, and title passed to Buyer upon delivery to carrier at such point, and packaging will be accomplished in accordance with Seller's standard commercial practice for domestic shipments. Seller may ship goods to the Buyer's place of business by such means as Seller shall select if adequate shipping instructions are not received from Buyer at least thirty (30) days before the shipment date. Buyer accepts all risk of loss or damage thereto, upon delivery of goods by Seller to a carrier, shipper, forwarding agent, transporter, or Government mailbox or post office, whether selected by Buyer or Seller. In no event shall Seller be responsible for any goods after delivery to such shipping means.
- 5. Payments** – Terms of payment, on open accounts only, are net thirty (30) days from receipt of invoice, unless otherwise agreed to in writing. Buyer agrees to pay Seller's finance charges (10% per annum) for late payments, and any expenses incurred in collecting such unpaid balance and finance charges, or in recovering possession of the goods.
- 6. Cancellation** – This Agreement is subject to cancellation only upon Seller's accepting such cancellation in writing, and the effective date of such cancellation shall be the date of such acceptance. Upon acceptance of cancellation, Seller shall commence efforts to terminate the purchase, rental, service, and employment commitments relating to the order, and Buyer shall be liable for the costs of terminating such commitments, as well for the payment for completed work, work in process at the time of cancellation, and lost profits. Buyer shall make payment of cancellation charges upon receipt of statement of same. Cancellation charges shall not exceed the purchase price of the cancelled portion of the Agreement.
- 7. Acceptance** – Buyer shall inspect all goods immediately upon their delivery to the destination stated in the Agreement and shall within ten (10) days provide written notice to Seller at its principal place of business of any claim that the goods do not conform to the terms of the Agreement. Any such notice shall specify with particularity each alleged defect or nonconformity. If Buyer shall fail to give such timely notice, the goods shall be conclusively deemed to conform to the terms and specifications of this Agreement and shall constitute an irrevocable acceptance of the goods. Any use by Buyer of the goods other than solely for test purposes, or any alteration of the goods by Buyer without Seller's prior written consent, shall be conclusive and binding evidence that the goods conform to the terms and specifications of this Agreement. If Buyer accepts or is deemed to have accepted the goods as hereinabove provided, Buyer shall not be entitled to revoke acceptance thereof at a subsequent time. In the event Buyer timely rejects the goods in accordance with the terms of this Agreement, Buyer shall hold the goods without charge to Seller for a reasonable time until Seller shall give instructions to Buyer with respect to the goods. Should Buyer sell or dispose of the goods, such sale or disposition shall constitute an unequivocal acceptance of the goods, notwithstanding any prior rejection of the goods.
- 8. Excusable Delays** – Seller shall not be in default for failure to deliver or delay in delivery arising out of causes beyond its control and without its negligence, including, but not limited to: Acts of God or the public enemy; Acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of materials or suppliers, labor disputes, freight embargoes, delays in transit, and unusually severe weather. If the delay or failure to deliver is caused by a delay or failure of a subcontractor supplier of Seller, and if such delay or failure arises out of causes beyond the control of Seller, Seller shall not be liable in damages nor shall Seller be in default hereunder, unless the material or services to be furnished by the subcontractor or supplier were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule using reasonable effort. Any of the above excusable delays shall not terminate this Agreement, and Seller shall deliver the goods as promptly as practical thereafter. The time of the delivery set forth in the Agreement shall be extended, in the event of any change order or request for modification required by Buyer, for such period as is reasonably necessary for Seller to comply with any such change order or request for modification. In the event of a failure to deliver the goods in a timely manner, Buyer shall not have any right to procure goods from any other source except at Buyer's sole expense, provided, however, that after payment to Seller of the contract price for any completed goods and work in process, according to the terms of this Agreement, Buyer may procure such goods or portions thereof with Seller's written approval, and at Buyer's expense, the price of which shall not exceed the amount still owing under this Agreement after required payments for such completed goods and work in process that have been subcontracted therefrom. Buyer's acceptance of late delivery goods shall constitute complete and satisfactory performance by Seller.
- 9. Patent Indemnity** – If the goods furnished hereunder are specified in the Agreement as being "standard commercial supplies" of Seller, Seller agrees to indemnify Buyer, its successors, assigns, agents, and users of its products against loss, damage, or liability, including cost and expenses, such as 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 goods supplied hereunder, provided Buyer shall promptly 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 thereto. In the event the goods furnished hereunder are produced under special specifications of Buyer, no liability under this paragraph shall arise against Seller. In like manner, Buyer agrees to save Seller harmless from patent infringements resulting from Seller's compliance with designs and/or specifications not originating with Seller now or hereafter forming a part of this Agreement or with specific written instructions given by Buyer for the purpose of directing the manner in which Seller shall perform this Agreement.
- 10. Use of Products** – Seller grants no license or right, expressly or by implication, estoppel, or otherwise, beyond the right of Buyer to use the specified goods in the form delivered by Seller. Further, Seller's products are offered for sale and are sold subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel, or otherwise, under any patent claim with respect to which Seller could grant licenses covering any other product, or any completed equipment, or any assembly, piping spool, circuit, combination, method or process in which, or in the manufacturing or testing of which, any such Seller products are used (notwithstanding that such Seller products may have been designed only for use in, or may only be useful in, such other patented products or such patented equipment, assembly, piping spool, circuit, combination, method or process, or in the manufacturing or testing thereof, and that Seller products may have been purchased and sold for such use). Seller expressly reserves all its rights under such patent claims.
- 11. Proprietary Rights** – The prints, drawings or specifications of Seller attached hereto or hereafter furnished by Seller to Buyer in connection with the obtaining or the performance of this Agreement are the property of Seller and represent a proprietary article with respect to which Seller retains all United States or foreign letters patent, trademarks or copyrights, including exclusive rights of use, manufacture and sale. Possession by Buyer of such prints, drawings or specifications does not convey any permission to manufacture, use or sell any goods shown thereon, and such information is disclosed to Buyer on a confidential basis. Buyer shall not, directly or indirectly, disclose, copy or otherwise transfer such information to any third party at any time without the prior written consent of Seller. Buyer, Buyer's customers and users of the goods shall not modify or reverse engineer any of the goods or parts thereof.
- 12. Termination** – If Buyer fails to comply with any of the provisions hereof, or becomes the subject of a proceeding under state or federal law for relief of debtors, or makes an assignment for the benefit of creditors, Seller shall have the right to hold Buyer in default and, in addition to any other rights it may have, may cancel this Agreement in whole or in part.
- 13. Effect of Invalidity** – The invalidity in whole or in part of any provision hereto shall not affect the validity of any other provision.
- 14. Credit** – Seller reserves the right any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion the financial condition of the Buyer so warrants. In such case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from Buyer may be required by Seller before shipment, or Seller may, at its option, defer further shipments to Buyer until Buyer reestablishes satisfactory credit, cancel the unshipped portions of the order without any liability for failure to ship, or make shipments to Buyer on a prepayment or COD basis. Payments made by trade acceptances, notes, securities, postdated checks, etc., are unacceptable unless first approved in writing by Seller.
- 15. Remedies** – The rights and remedies provided Seller herein shall be cumulative, and in addition to any other rights and remedies provided by law or equity. Seller's failure to insist upon strict performance of any provision of this Agreement shall not be deemed to be a waiver of Seller's rights or remedies, nor a waiver by Seller of any subsequent default by the Buyer in performance of compliance with any of the terms of this Agreement.
- 16. Disputes** – Any controversy or claim arising out of or relating to this Agreement or a breach thereof shall be settled by arbitration in Los Angeles, California, in accordance with the Rules of the Judicial Arbitration Mediation Service ("JAMS"). Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment on any award thus obtained may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to award any form of relief, provided, however, that the arbitrator(s) shall not have authority to award punitive damages. The cost of the arbitration shall be borne equally by the parties and each party shall be responsible for payment of its own attorneys' fees, expert witness fees and other expenses incurred in connection with the arbitration. In the event JAMS is not available to conduct the arbitration, the arbitration shall be conducted by the American Arbitration Association in accordance with its Rules for Commercial Arbitration then in effect.
- 17. Assignment** – Buyer may not assign this Agreement, or any portion thereof without the express prior written consent of Seller. Subject always to the foregoing, this Agreement insures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto. In no event shall assignment relieve Buyer of liability for performance of the obligations imposed by this Agreement.
- 18. Conformance with Law** – Buyer assumes all responsibility for conformance of the goods with laws, rules, regulations and ordinances of any governmental or quasi-governmental agency applicable to the use or operation of the goods.
- 19. Entire Agreement** – This Agreement shall constitute the entire understanding of the parties with reference to the subject matter hereof, and it is agreed that there are no understandings, promises, representations or agreements, whether oral or written, heretofore entered into between Seller and Buyer which have any force or effect. Only a writing signed by the parties may amend this Agreement. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, promise, representation or warranty concerning the goods, and any such affirmation, promise, representation or warranty shall be of no force or effect unless set forth in this Agreement. The laws of the State of California shall govern the formation, performance, and construction of this Agreement.

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

1. **ACCEPTANCE** – Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and reverse side of this purchase order. 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 purchase order unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, 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 contained on the face and reverse side of this purchase order. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected, but this purchase order shall not operate as a rejection of Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

2. **EXTRAS** –

Taxes – 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.

Shipment – 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 the manner which is (a) in accordance with good commercial practice, (b) acceptable to common carriers for shipment at the lowest rate for the particular goods and in accordance with the applicable delivery requirements, and (c) 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 an FOB destination basis to Buyer's designated plant or plants. If, in order to comply with Buyer's required delivery date, 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.

Extras – 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 is a matter within Buyer's sole determination.

3. **SPECIFICATIONS** – All goods ordered to Buyer's specifications must comply with specifications current as of the date of this 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.

5. **INSPECTION** – Unless otherwise specified all goods ordered will be subject to final inspection and approval at the plant of Buyer, 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, and the expense of any such action, including transportation both ways, if any, 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.

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

7. **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 order.

8. **DEFAULTS & EXCUSABLE DELAYS** – (a) Time is of the essence with respect to this purchase order, and Buyer reserves the right to cancel 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 cancel 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. 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.

(b) In the event Buyer terminates this 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 order to the extent not terminated under the provisions of the preceding subparagraph.

(c) If after notice of termination of this order under the provisions of this paragraph, it is determined that Seller's failure to perform this 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 order entitled "Termination for Convenience," and the rights and obligations of the parties hereto shall in such event be governed by said paragraph.

9. **TERMINATION FOR CONVENIENCE** – 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. 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.

10. **CHANGES** – Buyer reserves the right at any time to make changes in drawings, designs, and specifications, methods of shipment and packaging, quantities, schedules and place of delivery as to any material or work covered by its 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, there will be 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.

11. **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.

12. **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.

13. **COMPLIANCE WITH STATUTES AND REGULATIONS** – 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.

14. **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.

15. **REMEDIES** – The remedies herein reserved 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.

16. **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.

17. **KNOW HOW** – It is agreed that all information and drawings relating to the design, engineering, manufacturing and other operations, processes and experiences instrumental to the manufacture of all goods reflected elsewhere in this order (herein called "Know How") is confidential to Buyer. The Know How shall be disclosed by Buyer to Seller only to the extent that at the sole discretion of Buyer such disclosure is necessary for Seller to perform work under this order. Notwithstanding the foregoing, 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 to perform the work under this 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 with final shipment of the goods under this order.

18. **CERTIFICATE OF CURRENT PRICING** – Seller certifies that the prices and delivery schedules reflected elsewhere in this order are equal to or lesser than the prices and delivery schedules offered by Seller as of the date of this 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.

19. **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.

20. **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 warranty 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.

21. **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.

22. **APPLICABLE LAW; DISPUTES** – This purchase order and the rights and obligations of the parties hereunder or arising out of the purchase and sale of the goods pursuant hereto shall be governed and construed in accordance with the laws of the State of California, excluding conflict of law provisions. Any legal action or proceeding with respect to this purchase order or arising out of this purchase order shall be brought and maintained exclusively in the appropriate court of the State of California in and for the County of Los Angeles, and Seller and Buyer hereby each accept for itself and in respect of its property, generally and unconditionally, the personal and subject matter jurisdiction of said Court. Seller and Buyer each hereby irrevocably waive any objection that it may now or hereafter have to the laying of venue in any action or proceeding arising out of or in connection with this purchase order in such Court that any action or such proceeding brought in such Court has been brought in an inconvenient forum. In the event any action is instituted to enforce or interpret this purchase order or arising out of this purchase order, the prevailing party shall be entitled to all costs and legal expenses including, without limitation, reasonable attorneys' fees, expert witness fees, accountants' fees and court costs.

23. **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 Agreement 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.