

**JORGENSEN STEEL MACHINING & FABRICATION, INC.**  
**PURCHASE ORDER TERMS AND CONDITIONS**

1. **Offer and Acceptance.** The purchase order ("Purchase Order") incorporating these Purchase Order Terms and Conditions (as amended from time to time in accordance with Section 31 hereof, "Terms and Conditions") is an offer by Jorgensen Steel Machining & Fabrication, Inc. or its applicable affiliate identified on the Purchase Order ("Buyer") to the party to whom the Purchase Order is addressed ("Seller") to enter into the agreement it describes, including, without limitation, to purchase the materials, goods, or services (collectively, "Products") identified in such agreement and it shall be the complete and exclusive statement of such agreement ("Agreement") between Buyer and Seller. Seller will be deemed to have accepted Buyer's offer and this Agreement in its entirety, without modification, upon the earliest of (a) Seller's acceptance via a formal written acknowledgment to Buyer, (b) Seller's delivery of any Products that are the subject of this Agreement or (c) any other conduct by Seller that recognizes the existence of this Agreement, including, without limitation, preparation for or commencement of any of the work stated in the Purchase Order. Acceptance is expressly limited to these Terms and Conditions and such other terms and conditions as are expressly referenced on the face of the Purchase Order. Any additions or modifications proposed by Seller are expressly rejected by Buyer and are not part of this Agreement in the absence of an agreement in writing signed by an authorized representative of Buyer. In no event shall a Purchase Order constitute an acceptance of any offer or proposal made by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise.

2. **Purchase.** Subject to the terms of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to provide to Buyer, such Products as are identified in the Purchase Order.

3. **Order Procedure.**

(a) Seller shall deliver Products to Buyer in accordance with the firm quantities and at the times and locations specified on the Purchase Order or any delivery schedules and/or releases issued in connection with such Purchase Order at the prices specified on such Purchase Order for so long as such Purchase Order remains in effect. Unless the Purchase Order expressly provides that Buyer will purchase one hundred percent (100%) of its requirements from Seller, Buyer shall not be required to purchase Products exclusively from Seller.

(b) From time to time, Buyer may provide Seller with, and Buyer's Purchase Orders, delivery schedules and/or releases may contain, estimates, forecasts or projections of Buyer's future volume or quantity requirements for Products and/or project duration. Such estimates, forecasts and projections are not binding on Buyer and Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such estimate, forecast or projection provided to Seller.

(c) Time and quantity of delivery are of the essence in this Agreement. Seller shall be responsible for paying any express delivery or similar charges necessary to meet established delivery dates and shall bear all other costs, expenses and damages, including but not limited to any liquidated damages, arising out of any delay in delivery or performance by Seller. Acceptance by Buyer of any delayed delivery or performance shall not constitute a waiver of any of Buyer's rights or a waiver of any claim for damages that Buyer may have arising from and out of such delay, whether under this Agreement or otherwise.

(d) Buyer shall have no liability for payment for Product delivered to Buyer that is in excess of the firm quantities specified in the Purchase Order, delivery schedule and/or release, nor shall Buyer have liability for the temporary suspension of scheduled shipments.

(e) Upon written request by an authorized representative of Buyer, Seller shall manufacture Products in excess of Buyer's current requirements as a reserve for shipment at such levels as may be set by Buyer from time to time in its sole and absolute discretion. Until such reserve Products are purchased by Buyer, they shall remain the property of Seller and shall be held by Seller at Seller's sole risk and expense. Upon purchase by Buyer, such reserve Products shall constitute Buyer's Property and be held by Seller in accordance with Section 22 of these Terms and Conditions.

4. **Specifications.**

(a) Each of the Products provided by Seller shall strictly conform to the specifications, designs, drawings, samples or descriptions for such Products furnished to or by Buyer ("Specifications").

(b) If applicable, each Product must contain a date-code from which the date of production can be determined ("Date-Code") in a YYDDD format in which the first two-digits represent the year of production and the last three digits represent the day of the year on which the Product was manufactured. Any other Date-Code requires the prior written approval of an authorized representative of Buyer, in its sole discretion. The Date-Code must be placed on the Product in a location acceptable to Buyer that is: (i) separated from any other coding or information on the label or the Product, such as an expiration or "best used by" date, a batch code, etc.; and (ii) readily observable without irreversibly disassembling any portion of the Product container or packaging and without removing any packaging.

(c) Upon request, Seller shall provide Product samples, accessory items, and packaging ("Samples") in accordance with the Specifications. Buyer will inspect the Samples and notify Seller of changes, as determined by Buyer in its sole discretion, that need to be made before production, and/or packaging of Products may be commenced. The final Samples, approved in advance in writing by an authorized representative of Buyer, shall supplement the Specifications.

(d) In the event that Seller determines to discontinue any Product or otherwise change or deviate from the Specifications of any Product at any time during the period that such Product is covered by a current Purchase Order or within one (1) year after final delivery of such Products under a Purchase Order, Seller shall provide Buyer with not less than 180 days' prior written notice of such proposed discontinuance, change or deviation, which notice shall contain detailed information regarding the proposed discontinuance, change or deviation and the availability of any alternative or substitute Products. Seller will cooperate with Buyer during such 180 day period to provide Buyer with such quantities of the current Product as Buyer may determine is necessary to fill Buyer's current and future requirements for such current Products.

5. **Packaging, Enclosures, and Marking.**

(a) All packaging shall strictly conform to the applicable Specifications. Seller shall package Products so that they withstand, without damage, the mode of transportation selected by Buyer for each shipment.

(b) Unless otherwise directed, each delivered container must be labeled and marked to identify contents without the necessity of opening any such container, and all boxes and packages must contain packing sheets listing contents. Buyer's Purchase Order number must appear on all shipping containers, packing sheets, delivery tickets, and bills of lading. Seller must guarantee quantities marked in boxes are 100% accurate.

(c) In the event that Seller provides the content for the packaging, e.g., claims regarding performance of the Products or benefits the user of the Products receives, then Seller shall substantiate all claims made by Seller with respect to the Products. Such substantiation shall be provided to Buyer with Samples and shall demonstrate that such claims are compliant with all applicable Laws.

(d) Seller agrees that it shall not use Buyer packaging in any manner except in connection with the manufacture and/or distribution of the Products covered by this Agreement. Buyer has no obligation to mark such packages with information concerning Seller's intellectual property rights, if any.

(e) Seller shall not, without prior authorization from Buyer, provide to Buyer any package or packaging component (including coatings, inks, labels or glues) containing any mercury, cadmium, lead, or hexavalent chromium subject to the provisions of "toxics in packaging" Laws.

**6. Shipment, Delivery and Title.** Seller shall bear all risk of loss for the Products until such Products are delivered and fully unloaded at Buyer's designated location. Premium shipping expenses and/or other related expenses necessary to meet Buyer's customary delivery schedules shall be the responsibility of Seller.

**7. Nonconforming Products.**

(a) All Products shall be received by Buyer subject to Buyer's inspection and acceptance or rejection. Buyer, at its option, may reject and return at Seller's risk and expense, or retain, subject to a reasonable reduction in price, Products that fail to conform to the requirements of this Agreement, regardless of when the nonconformity becomes apparent to Buyer, or whether Buyer has made payment for such Products. Seller acknowledges that Buyer has no obligation to perform incoming inspections of Products and waives any right to require Buyer to conduct such inspections. Buyer's acceptance, inspection, or failure to inspect, does not relieve Seller of any of its obligations, responsibilities or warranties, including without limitation its obligation to deliver conforming Products.

(b) Seller shall replace nonconforming Products with conforming Products unless Buyer notifies Seller that it is electing to retain such Products, subject to a reasonable reduction in price, or otherwise notifies Seller in writing that it does not require such replacement. Nonconforming Products that will be replaced will be held by Buyer for disposition in accordance with Seller's written instructions at Seller's risk and expense. Seller's failure to provide written instructions within ten (10) days (or such shorter period as may be commercially reasonable under the circumstances) after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the Products without any liability of Buyer to Seller.

(c) In addition to any and all other rights or remedies available to Buyer, Seller shall reimburse Buyer for (i) any amounts paid by Buyer on account of the purchase price of any rejected nonconforming Products, and (ii) any costs, expenses and damages incurred by Buyer in connection with the nonconforming Products, including, but not limited to inspection, sorting, testing, evaluations, storage, rework or reprocurement.

(d) In the event Seller is required to perform any services on any Product, Seller will be responsible for the full cost of any Product that is determined to be scrap as a result of nonconforming services.

**8. Quality Testing and Inspection.**

(a) Seller agrees that it shall establish and maintain best industry practices and standards with respect to test and inspection procedures to ensure the Products conform to the requirements of this Agreement, including, without limitation, all Specifications. Seller shall maintain, and provide copies to Buyer, if requested, of test data documentation that accurately measures and ensures such conformance. Seller shall notify Buyer in writing immediately upon becoming aware of any material, component, design or defect in the Products that is nonconforming or that may be or become harmful to persons or property.

(b) Without limiting Buyer's inspection rights upon or following delivery, Buyer shall have the right, whether at Seller's facilities or otherwise, to inspect and test any Product at any point through the Products' ultimate destination. If Products are found to be defective, in any respect, in whole or in part, then Seller shall promptly repair or replace such Products at Seller's expense and risk. Upon authorization by Seller, or if Seller is unable, refuses, or does not proceed promptly with such repair or replacement, then Buyer may elect, by contract or otherwise, on Buyer's premises or elsewhere, to repair or replace such defective Products and assess to Seller the cost incurred by Buyer thereby.

**9. Service and Replacement Parts.** If requested by Buyer, Seller will sell to Buyer all goods necessary for Buyer to fulfill Buyer's and its customers' service and replacement parts requirements at the production prices under this Agreement. If the Products are systems, modules or assemblies, Seller will sell the components or parts of such systems, modules or assemblies at prices that will not in the aggregate exceed the production price under this Agreement for the system, module or assembly.

**10. Compliance with Laws.** Without limiting any of its other obligations hereunder, Seller acknowledges and agrees to comply with all federal, state, local and foreign laws, orders, rules, regulations and ordinances ("Laws") that may be applicable to Seller's performance of its obligations and duties required by this Agreement or that are otherwise applicable to the manufacture and sale of any Products, and this Agreement shall include and incorporate by reference all the clauses required by the provisions of said Laws. In addition to the foregoing, Seller agrees that it will perform its duties and obligations under the Agreement so as to satisfy current government and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations, in each case as applicable to the country of manufacture and sale. Seller shall certify to Buyer that any hazardous substances furnished pursuant to this Agreement have been properly labeled and that proper information of the substances has been provided to Buyer pursuant to any Laws. Seller agrees to comply, and will ensure that its suppliers, subcontractors, employees and agents comply, and will take all necessary steps to assist Buyer in complying, with any standards of business conduct prescribed by Law. Without limiting the generality of the foregoing, Seller warrants that neither it nor any of its suppliers or subcontractors shall utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of Products under this Agreement. At Buyer's request, Seller shall certify in writing its compliance with the foregoing and will provide Buyer with whatever information or documentation is necessary for Buyer to comply with applicable Laws.

**11. Prices, Invoices and Payment Terms.**

(a) Except as otherwise expressly provided in the Purchase Order, all prices for Products: (i) are fixed for the duration of the Purchase Order and not subject to increase for any reason, including but not limited to increased raw material costs, increased labor or other manufacturing costs, increased development costs, currency fluctuations or changes in volumes or project duration from those estimated or expected; (ii) are inclusive of all federal, state, provincial, value added and local taxes and any duties applicable to provision of the Products; and (iii) are inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller shall separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

(b) Seller shall ensure that the prices charged to Buyer for Products are and remain not less favorable to Buyer than the prices currently extended to any other customer of Seller for the same or substantially similar goods or services in the same or substantially similar quantities and delivery requirements. If Seller reduces the prices of such same or substantially similar goods or services during the term of this Agreement, Seller shall reduce the prices of the Products correspondingly.

(c) Except as otherwise expressly provided in the Purchase Order, payment terms for all Products are net 60 days following presentation of Seller's correct and complete invoice and documents proving shipment.

## 12. Changes.

(a) Buyer reserves the right at any time to make written changes under this Agreement, including, but not limited to, changes in any of the following: (i) Specifications; (ii) methods of processing; (iii) methods of shipment or packing; (iv) place of delivery; (v) time of delivery; (vi) manner of delivery; and (vii) requested quantities.

(b) Seller agrees to promptly make any such change. Any such change shall be deemed not to affect time for performance or cost unless Seller notifies Buyer in writing of an adjustment claim (accompanied by all supporting documentation) within ten (10) calendar days after Seller receives notice of such change. Buyer, after auditing such claim, determines that an adjustment is appropriate, and the adjustment is approved by an authorized representative of Buyer in writing. Price increases shall not be binding on Buyer unless evidenced by a Purchase Order amendment issued and signed by an authorized representative of Buyer. Nothing in this Section shall excuse Seller from proceeding with the Agreement as changed.

(c) Seller (including, for clarification, its suppliers and/or subcontractors) may not make any changes to this Agreement, Specifications, or the Products covered by this Agreement without the express prior written approval of an authorized representative of Buyer, including, but not limited to, any change to (i) any third party supplier to Seller of services, raw materials or goods used by Seller in connection with its performance under this Agreement, (ii) the facility from which Seller or such supplier operates, (iii) the nature, type or quality of any services, raw materials or goods used by Seller or its suppliers in connection with this Agreement; or (iv) the production method, or any process used in the production or provision of any Products under this Agreement.

## 13. Warranties.

(a) In addition to any warranty or representation that Seller has published or otherwise extended to Buyer regarding the Products and without limiting any warranties otherwise set forth in the Agreement, Seller expressly warrants that all Products will strictly conform to the Specifications, all applicable industry standards, and all Laws and other governmental requirements in force in countries where the Products or products equipped with such Products are to be installed or sold, be free of infringements of intellectual property rights of third parties, and will be merchantable, of good material and workmanship and free from defects. Seller expressly warrants that for all Products, Seller shall convey good title to Buyer, free and clear of all liens, claims or other encumbrances.

(b) In addition, Seller acknowledges that Seller knows of Buyer's intended use for the Products and expressly warrants that all Products will be fit and sufficient for the particular purpose intended by Buyer, including, without limitation, the specified performance in the component, system, and/or subsystem specified by Buyer and the environment in which the Products are or reasonably may be expected to perform.

(c) The warranties under this Section will be effective for the longer of (i) the period provided by applicable Law, (ii) the warranty period provided by Buyer to its applicable customer(s), or (iii) two (2) years from the final inspection of the relevant Product; provided, however, in the case of any recall campaign or other customer satisfaction or corrective service action undertaken by Buyer or its customers, the warranty shall continue for such time period as may be dictated by Buyer's customer or the federal, state, local or foreign government where the Products are used.

(d) Seller shall repair any defects during the applicable warranty period at Seller's cost and expense (including, without limitation, for all parts, labor and transportation costs) immediately after being notified of any such defect or defects by Buyer.

(e) All warranties contained in this Agreement shall run, and all remedies shall be available to, Buyer and Buyer's affiliates, and their respective customers, and all such warranties shall survive any delivery or provision of Products, or inspection or acceptance of such Products, or payment therefor, by Buyer.

(f) THE WARRANTIES AND REMEDIES CONTAINED IN THIS AGREEMENT SUPPLEMENT THE WARRANTIES AND REMEDIES PROVIDED BY THE UNIFORM COMMERCIAL CODE AND SHALL NOT BE DISCLAIMED OR LIMITED IN ANY WAY.

## 14. Indemnification.

(a) To the fullest extent permitted by applicable law, Seller hereby agrees to indemnify, defend and hold harmless Buyer, its affiliates, customers, and their respective shareholders, members, managers, directors, officers, employees, and agents, from and against any and all actions, claims, demands, judgments, recall campaigns or other customer satisfaction or corrective service actions, losses, costs, liabilities, damages, including, but not limited to, property damage, personal or bodily injury, or death, expenses and/or fees (including reasonable attorneys' fees), penalties and/or citations of whatsoever kind, character or description ("Claims") that are incurred by or asserted against Buyer and that are related in any way to or arise in any way from: (i) Seller's actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, industrial design right, or other proprietary right, by reason of the manufacture, use, provision, performance, or sale of the Products; (ii) any defect or alleged defect in any Products provided by Seller under the Agreement; (iii) any noncompliance or alleged noncompliance by Seller with its representations, warranties or obligations under the Agreement; or (iv) any negligence or fault or alleged negligence or fault of Seller in connection with the design, manufacture, or provision of Products, in each case unless such Claims have been specifically determined by the trier of fact to be the result of the sole negligence of Buyer.

(b) For the avoidance of doubt, this indemnification obligation requires Seller to pay any judgments against Buyer resulting from any Claim, any court costs of Buyer in connection with any Claim, and any reasonable legal fees and disbursements incurred by Buyer in Buyer's defense of any Claim. Buyer will have the sole and exclusive right to conduct the defense of any Claim at Seller's sole expense.

15. **Customer Terms.** Seller acknowledges that Products covered by this Agreement may be sold, or incorporated into goods or services that will be sold, by Buyer to an original equipment manufacturer, whether directly or indirectly through an upper tier supplier, or any other third party customer (collectively, "Customer"). Accordingly, Seller shall take such steps, provide such disclosure, comply with such requirements and do all other things as Buyer deems necessary or desirable and within Seller's control to enable Buyer to meet Buyer's obligations under the terms and conditions of any contract or purchase order or other document ("Customer Terms") that may be applicable to Buyer from time to time in respect of its direct or indirect supply of such goods or services to the Customer. While Buyer may, from time to time, provide Seller with information

regarding the applicable Customer Terms, it is Seller's responsibility to ascertain the Customer Terms that may affect Seller's obligations under this Agreement.

16. **Insurance.** Seller shall, at its own cost and expense, during the term of the Agreement and for a period of five (5) years after the date of Seller's last shipment of Products under the Agreement, purchase and maintain the following insurance written by an insurer acceptable to Buyer and which is licensed to conduct business in the United States. Such insurer shall have a minimum A.M. Best Rating of A-X or a minimum Standard & Poor's rating of A.

(a) **General Insurance.**

- (i) Commercial General Liability, Premises Liability, Products/Completed Operations Liability, Blanket Contractual, with coverage written on an occurrence form, including minimum policy limits of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.
- (ii) Commercial Automobile Liability, with the minimum policy limit of \$1,000,000, per occurrence.
- (iii) Workers Compensation, including Employer's Liability (or local equivalent), written on an occurrence form, with minimum policy limits of \$500,000, per occurrence.
- (iv) Product Liability Insurance, which shall be written on an occurrence form, with minimum policy limits of \$5,000,000, for non-burning appliances, per occurrence and it shall include the following extensions: blanket contractual coverage, a severability of interest clause and, if Seller is a non-U.S. entity, coverage shall extend to suits and/or claims made in the United States.
- (v) Commercial Umbrella Liability Policy, with a minimum policy amount of \$5,000,000.

(b) All of Seller's required insurance: (i) shall name Buyer, its affiliates, and their respective officers, directors, employees, stockholders, and agents as additional insureds, (ii) shall contain provisions that Seller's insurers shall have no right of recovery or subrogation against Buyer, its affiliates, and their respective officers, directors, employees, stockholders, agents, and insurers, (iii) shall be primary to, and shall receive no contribution from any other insurance maintained by, on behalf of, or benefiting Buyer, its affiliates, and their respective officers, directors, employees, stockholders, agents, and insurers, (iv) shall provide that thirty (30) days written notice shall be given to Buyer prior to any material change in, or cancellation of, such insurance policies and (v) shall not contain a punitive damage exclusion.

(c) Seller shall furnish Buyer with certificates of insurance evidencing the coverages and minimum limits set forth above, including those of any subcontractor, prior to or concurrent with the inception date of the Agreement, during the term of the Agreement, and for a period of five (5) years after the date of Seller's last shipment of Product under the Agreement. Failure of Seller to secure the required coverages and minimum limits, or the failure to supply certificates of insurance properly evidencing such coverages and minimum limits shall in no way relieve Seller of its obligations herein. Seller shall, upon request from Buyer, supply Buyer with certified copies of the required insurance policies. For the avoidance of doubt, Seller hereby agrees and acknowledges that it shall provide certificates of insurance evidencing the above requirements to Buyer (i) prior to or concurrently with the execution of this Agreement, (ii) within 10 days of each twelve (12) month anniversary of the date of this Agreement, (iii) within 10 days of any required changes to any coverage under this Section 16, and (iv) as reasonably requested by Buyer from time to time.

(d) Buyer, in its sole discretion, reserves the right to require additional coverage from time to time reasonably consistent with the use of the Products and the area(s) in which they are distributed.

17. **Confidentiality.**

(a) Seller acknowledges and agrees that during the term of the Agreement, Seller may have access to certain Confidential Information (as defined herein). Seller acknowledges and agrees that it will not, without the prior written consent of an authorized representative of Buyer, directly or indirectly disclose any Confidential Information to any third party, or directly or indirectly use, exploit, copy or summarize any Confidential Information in any way except as necessary in performing Seller's duties and obligations as required by this Agreement. If requested by Buyer, Seller shall require its employees to execute confidentiality agreements prohibiting use or disclosure of Confidential Information.

(b) "Confidential Information" means all information (regardless of medium) that is disclosed or otherwise made available to Seller by Buyer or its representatives or subcontractors either before, during or after the termination of this Agreement and that concerns Buyer, its customers, or the business, programs and Products covered by this Agreement, including without limitation, pricing and other terms of this Agreement; software programs; computer codes; software documentation; methodology documentation; design concepts, blueprints, specifications, and engineering data; manufacturing, packaging and shipping processes and technology; reference manuals; any knowledge, data, or records concerning the operations, policies, procedures, personnel matters, finances, business and marketing plans, strategic and/or operational plans, company contracts or any other information relating to the ownership or operation of Buyer and any of its affiliates; and any and all information, knowledge, data or records concerning any officer, director, owner, shareholder, employee, agent, representative, consultant, client or customer of Buyer.

(c) Confidential Information does not include information that: is now or subsequently becomes generally available to the public through no fault of Seller; Seller can demonstrate was rightfully in its possession prior to disclosure by Seller; is independently developed by Seller without the use of or reference to any Confidential Information; or Seller rightfully obtained from a third party who had the right to disclose the information. Confidential Information is, and shall remain, the property of Buyer. At the conclusion of Seller's duties and responsibilities as required by this Agreement, Seller shall return and/or destroy, at Buyer's option, all originals and any copies of any Confidential Information in any medium.

18. **Ownership, Proprietary Rights.**

(a) Seller acknowledges that any Product and/or other deliverables provided to Buyer under this Agreement shall be original to Seller and shall not incorporate any intellectual property rights (including copyright, patent, trade secret, mask work or trademark rights) of any third party.

(b) All Products and/or other deliverables are owned by Buyer and not by Seller. Such Product and/or deliverables include copyrightable works of original authorship (including but not limited to computer programs, technical specifications, documentation and manuals, ideas, inventions (whether patentable, patented or not), know-how, processes, compilations of information, trademarks, and other intellectual property. Seller agrees that all works of original authorship created by Seller in connection with this Agreement are "works made for hire" as that term is used in connection with the United States Copyright Act. To the extent that, by operation of law, Seller owns any intellectual property rights in any of the Product and/or other deliverables, Seller hereby assigns to Buyer all rights, title and interest, including copyrights and patent rights in such Product and/or deliverables.

(c) Seller grants to Buyer a worldwide, nonexclusive royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed, to make or have made the Products ordered under this Agreement. Seller assigns to Buyer all right, title and interest in and to all

trademarks, copyrights and industrial design rights in any material created for Buyer under this Agreement. Seller agrees that technical information and data furnished to Buyer in connection with this Agreement are disclosed on a nonconfidential basis.

**19. Seller's Financial Condition.** Upon Buyer's request, Seller shall permit Buyer and its representatives to review Seller's books and records concerning Seller's overall financial condition and continued ability to perform under this Agreement and agrees to provide Buyer with full and complete access to all such books and records for such purpose. Buyer will protect all financial information so disclosed by Seller by using the same degree of care, but no less than a reasonable degree of care, to prevent the dissemination to third parties or publication of the financial information as Buyer uses to protect its own confidential information of a like nature. Seller represents and warrants to Buyer that all financial information concerning Seller provided to Buyer will be true and accurate, will fairly represent Seller's financial condition, and will be prepared in accordance with generally accepted accounting principles, uniformly and consistently applied.

## **20. Termination.**

(a) Upon written notice to Seller, Buyer may immediately terminate this Agreement, without any liability to Seller, in the event of the happening of any of the following or any other comparable event: (i) the insolvency of Seller; (ii) the filing of a voluntary petition in bankruptcy by Seller; (iii) the filing of an involuntary petition in bankruptcy against Seller; (iv) the appointment of a receiver or trustee for Seller; or (v) the execution of an assignment for the benefit of creditors of Seller.

(b) Upon written notice to Seller, Buyer may immediately terminate all or any part of this Agreement, without any liability to Seller, if Seller (i) repudiates, breaches, or threatens to breach any of the terms of this Agreement, including Seller's warranties, (ii) fails to perform or threatens not to provide or deliver Products in accordance with the provisions of this Agreement; or (iii) fails to assure timely and proper completion or delivery of Products.

(c) In addition to any other rights of Buyer to terminate this Agreement, Buyer may immediately terminate all or any part of this Agreement, at any time and for any reason, by notifying Seller in writing. Upon receipt of notice of termination pursuant to this subsection (c), Seller, unless otherwise directed in writing by Buyer, shall terminate immediately all work under the Agreement. Upon such termination, Buyer's sole obligation shall be to purchase finished Products that have already been manufactured prior to such date of termination. Notwithstanding the foregoing, in no event will Buyer be required to pay for finished Products in amounts that exceed the firm quantities Buyer authorizes in Purchase Orders, delivery schedules or releases issued prior to such date of termination, nor will Buyer be required to pay for any goods or materials that are in Seller's standard stock or that are readily marketable. Additionally, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of the Agreement, or otherwise.

(d) Any termination due to default in the delivery of the Product required hereunder shall not in any manner affect or terminate the rights and obligations of the Parties hereto which have accrued hereunder prior or subsequent to such delivery, and specifically, without limitation, the rights and obligations of the Parties regarding payment, warranties, parts, and indemnities.

(e) The obligations of Seller to Buyer under this Agreement shall survive termination of this Agreement, except as otherwise expressly stated in this Agreement.

**21. Netting, Setoff and Recoupment.** All amounts due from Buyer or any of its affiliates to Seller or any of its affiliates shall be net of any indebtedness or other obligations of Seller or any of its affiliates to Buyer or any of its affiliates. Buyer or any of its affiliates may, without notice to Seller or any of its affiliates, set-off against or recoup from any amounts due or to become due from Seller or any of its affiliates to Buyer or any of its affiliates, however and whenever arising. In the event that Buyer or any of its affiliates reasonably feels itself at risk as to any amount owed by Seller or any of its affiliates, Buyer or any of its affiliates may withhold and recoup a corresponding amount due Seller or any of its affiliates to protect against such risk. In addition to any rights otherwise provided or allowed by law or this Agreement, Buyer or any of its affiliates may retain or defer payment of all or any portion of the amount due from Buyer or any of its affiliates (even if such amount is not disputed, contingent or unliquidated and is otherwise due) to the extent of any obligation of Seller or any of its affiliates to Buyer or any of its affiliates, even if such obligation is disputed, contingent or unliquidated, until such obligation is resolved. Without limiting the generality of the foregoing, and by way of example only, in the event Seller or any of its affiliates is subject to insolvency, bankruptcy, receivership, liquidation or other similar proceedings, Buyer or any of affiliates may defer payments due to Seller or any of its affiliates, via an administrative hold or otherwise, against potential damages arising from rejection or otherwise.

## **22. Buyer's Property.**

(a) All supplies, materials, molds, machinery, equipment, patterns, tools, dies, jigs, fixtures, blueprints, designs, specifications, drawings, photographic negatives and positives, art work, copy layout, consigned material for production or repair and other items furnished by Buyer, either directly or indirectly, to Seller or to any sub-supplier of Seller in connection with or related to this Agreement, or for which Seller has been reimbursed by Buyer (collectively, "Buyer's Property"), shall be and remain the property of Buyer and be held by Seller on a bailment at-will basis. Buyer's Property shall be used by Seller only to complete its obligations under this Agreement and shall be returned by Seller to Buyer when no longer required under this Agreement, when this Agreement expires or is terminated, or upon demand by Buyer, whichever comes first. Seller shall be responsible for all personal property taxes and other charges or levies imposed on Buyer's Property while in Seller's possession.

(b) Seller shall bear the risk of loss of and damage to Buyer's Property and Seller, at its own expense, shall keep Buyer's Property insured for the benefit of Buyer. Buyer's Property shall at all times be properly housed and maintained by Seller; shall not be used by Seller for any purpose other than the performance of this Agreement; shall be conspicuously marked by Seller to identify same as the property of Buyer and indicate Buyer's name and address; shall not be commingled with the property of Seller or with that of any third person and shall not be moved from Seller's premises without prior written approval of an authorized representative of Buyer. Seller, at its expense, shall maintain, repair and refurbish Buyer's Property in first class condition. All replacement parts, additions, improvements and accessories for such Buyer's Property shall automatically become Buyer's Property upon their incorporation into or attachment to Buyer's Property.

(c) Seller agrees that Buyer has the right, at any time, with or without reason and without payment of any kind to enter Seller's premises retake possession of or request return of any or all Buyer's Property, without the necessity of obtaining a court order. Upon the request of Buyer, Buyer's Property shall be immediately released to Buyer or delivered to Buyer by Seller, either FOB transport equipment at Seller's plant, properly packaged and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property, or in any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable cost of delivering such Buyer's Property to such location. Buyer shall have the right to enter onto Seller's property and premises at all reasonable times to inspect Buyer's Property and Seller's records with respect to Buyer's Property.

(d) Seller shall keep a true record of all Buyer's Property in its possession under bailment, shall give the representatives of Buyer access to such record on demand, shall provide Buyer, upon Buyer's request, with a written inventory of all Buyer's Property, and shall permit representatives of Buyer to perform their own inventory of Buyer's Property in Seller's possession.

(e) When permitted by law, Seller waives any lien or other rights that Seller might otherwise have on or with respect to any Buyer's Property for work performed on such property, for the purchase price of any goods or services or otherwise. Seller's failure to deliver any item of Buyer's Property to Buyer (or its agent) at the end of the bailment, as directed by Buyer, will (i) be a breach of this Agreement, and (ii) subject Seller to liability for, among other things, conversion and responsibility for all costs and expenses, including actual attorneys' fees, incurred by Buyer to recover such Buyer's Property.

### **23. Books and Records.**

(a) Seller agrees to retain all books, records, certifications, reports and other documents and data related to this Agreement, Seller's performance under this Agreement and all Products under this Agreement for a period equal to the longer of (i) the life of the applicable Product, (ii) the period required by applicable Law, and (iii) three (3) years after receiving final payment from Buyer under this Agreement. Seller shall make all such items available for inspection by Buyer and, when requested by Buyer, furnish Buyer with copies of any such documents or data.

(b) Buyer shall have the right to inspect and audit Seller's books, records, operations and facilities, including Seller's quality system, to insure Seller's compliance with the terms of this Agreement. Seller shall maintain all records necessary to support amounts charged to Buyer under this Agreement. Buyer and its representatives may audit Seller's records of transactions to the extent needed to verify the quantities shipped and that the prices charged match the Agreement prices. Seller shall provide Buyer with reasonable access to its facilities and otherwise cooperate and facilitate any such inspections and/or audits by Buyer. Notwithstanding the foregoing, no inspection or failure to inspect by Buyer shall alter Seller's obligations under this Agreement.

### **24. Customs, Export.**

(a) Upon request, Seller shall promptly furnish all documents and other information required for customs drawback purposes, properly completed in accordance with government regulations applicable thereto. Unless otherwise stated in this Agreement or any related document, all customs drawback will be reserved and retained for, or credited to, Buyer.

(b) Export licenses or authorizations necessary for the export of the Products shall be the responsibility of Seller unless otherwise expressly agreed to in writing by Buyer, in which case Seller shall provide such information as may be necessary to enable Buyer to obtain such licenses or authorizations. Seller shall undertake such arrangements as necessary for the Products to be covered by any duty deferral or free trade zone programs of the country of import.

(c) Seller is responsible for any incorrect information provided by Seller or any non-compliance with the U.S. Customs Regulations by Seller that results in penalties and/or additional duties for Buyer. Seller agrees to adhere to all security procedures required by the Customs-Trade Partnership Against Terrorism (C-TPAT). Seller shall share with Buyer any audit or inspection information related to C-TPAT inspection and/or validation at Seller's location.

**25. Force Majeure.** Any delay or failure of Seller or Buyer to perform its obligations under this Agreement will be excused if, and only to the extent that, the party is unable to perform specifically due to an event or occurrence beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; or inability to obtain power. Force majeure does not include lockout, strikes or labor disputes, shortage of labor, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance. The nonperforming party shall notify the other party in writing of the cause and anticipated duration of any such delay promptly and in any event within one full business day after the occurrence of the event giving rise to the delay. If Seller is unable to perform for any reason, Buyer may purchase Products from other sources and reduce its purchases from Seller accordingly without any liability of Buyer to Seller.

**26. Independent Contractor.** The relationship of Buyer and Seller under this Agreement is and will at all times be that of independent contractors, and no agency, partnership, joint venture or other similar relationship is intended or created hereby.

**27. No Use of Buyer's Name.** Seller shall not at any time use Buyer's name or any Buyer trademark(s) or trade name(s) in any advertising or publicity without the prior written consent of Buyer.

### **28. Assignments and Subcontractors.**

(a) Seller may not assign or delegate any of its rights or obligations under this Agreement without prior written consent from Buyer. In addition, Buyer may terminate this Agreement upon giving at least thirty (30) days written notice to Seller, without any liability to Seller, (i) if Seller sells, or offers to sell, a material portion of its assets, or (ii) if Seller or any parent entity of Seller (A) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Seller or such parent entity, or (B) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Seller or such parent entity. Buyer may assign its rights and obligations under this Agreement at any time, without Seller's prior written consent.

(b) Seller acknowledges and agrees that it is not permitted to subcontract the performance of any part of the Agreement without the prior written approval of Buyer. If Buyer consents to Seller's subcontracting of any of Seller's duties under the Agreement, Seller will ensure that the subcontractor agrees to be bound by all of the terms and conditions of the Agreement, including, without limitation, by ensuring Buyer has access to such subcontractors' facilities to the extent Buyer has access to Seller's facilities hereunder. The subcontracting of any work hereunder shall not relieve Seller of its obligations hereunder.

### **29. Severability; Waiver; Construction.**

(a) If any term, covenant or condition of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held to be invalid or unenforceable, then the remainder of this Agreement, or the application of such term, covenant or condition to Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) The failure or delay of either party to enforce, at any time or for any period of time, any provision of this Agreement or any right or remedy available hereunder or at law or equity shall not be construed to be a waiver of such provision or of any available right or remedy. In addition, no

single or partial exercise of any right, power or privilege hereunder shall preclude the enforcement of any further exercise or exercise of any right, power or privilege hereunder.

(c) The various section headings are inserted for purposes of reference only and shall not affect the meaning or interpretation of this Agreement or any provision thereof.

30. **Notices.** All notices required by this Agreement shall be in writing. Notices in writing shall be sufficient if mailed by Buyer to Seller at whatever address Buyer has for Seller.

31. **Entire Agreement; Modifications.**

(a) This Agreement sets forth the entire understanding between the parties with respect to the subject matter herein, and supersedes and replaces the terms of any and all prior discussions, agreements or understanding between the parties. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the parties with regard to the subject matter herein other than as set forth in this Agreement.

(b) Buyer may modify these Terms & Conditions, at any time, by posting notice of such modified Terms & Conditions on Buyer's internet website as specified on the face of Buyer's Purchase Order. Such revised Terms & Conditions shall apply to all Purchase Orders and Purchase Order amendments issued on or after the effective date thereof. Seller shall review Buyer's internet website and the Terms & Conditions periodically. Other than as provided by this Agreement, this Agreement may not be modified or amended except by a written agreement signed by the parties.

32. **Governing Law; Jurisdiction; Venue.** The Agreement shall be governed by the internal laws of the State of Michigan without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. Seller consents to the exclusive jurisdiction of the Courts of the State of Michigan and the United States District Court for the Eastern District of Michigan for any action or proceeding arising out of, or in connection with, each Purchase Order or other documentation between Purchaser and Seller for the Products. Seller specifically waives any and all objections to venue in such courts.

33. **Cumulative Remedies.** The rights and remedies reserved to Buyer in this Agreement shall be cumulative with, and additional to, all other or further remedies provided in law or equity.

34. **Limitation on Actions.** Buyer and Seller agree that the period of commencement on any action, suit or legal proceedings by Seller related to this Agreement or to any default or alleged default hereunder, must be commenced by Seller within two (2) years from the date of the event giving rise to the claim.

35. **Waiver of Jury Trial.** BUYER AND SELLER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF BUYER AND SELLER, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER DOCUMENT PERTAINING TO THIS AGREEMENT.

Revised \_\_\_\_\_, 2014