



PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance:** This order, of which these terms and conditions are an integral part, shall become a binding contract when accepted by Seller's acknowledgment or commencement of performance; provided that, if this order is not accepted within the time specified, or if no such time is specified, within thirty days of the date of this order, then the order shall be deemed withdrawn unless Buyer extends such expiration date. This order may be accepted only on these Terms and Conditions; any addition or other modification to this order or in quantities, prices or deliveries which are contained in any acknowledgment, invoice or other form or communication from Seller is hereby objected to and rejected, notwithstanding Buyer's acceptance of delivery or payment.

2. **Price and Payment:** All amounts which become due Seller shall be subject to set off and recoupment. Payment shall not constitute acceptance of goods or services or waiver of any claims related thereto. If Seller shall quote or sell at lower net prices similar goods under similar provisions and in similar quantities, such lower prices will be substituted for the prices specified herein. If Buyer can purchase goods of like or lesser quantity at a price which will result in a lower delivered cost to Buyer or on terms otherwise more favorable to Buyer, then Buyer may notify Seller of such lower delivered cost or more favorable terms and Seller shall have an opportunity to reduce the price hereunder or change the other terms hereof to meet such lower delivered cost or more favorable terms. If Seller fails to do so, in writing, within thirty days of Buyer's notice, Buyer may purchase the goods at such lower delivered cost or at such more favorable terms, and the quantity of any purchase so made shall correspondingly reduce the purchase and sale obligations of Buyer and Seller hereunder.

3. **Delivery:** Time is of the essence with respect to Seller's obligations hereunder. Quantities delivered shall not vary from the quantities specified in this order. Unless specifically stated in this order, partial shipments will not be accepted by Buyer. Seller shall strictly comply with delivery instructions contained on the front of this order, or, if no instructions are stated,

goods shall be delivered F.O.B. destination designated by Buyer, freight allowed. Title and risk of loss of the goods shall pass to Buyer upon completion of delivery of each shipment.

4. **Inspection:** Buyer may make inspection and testing visits at the site where goods are being designed or manufactured or services performed, so long as such inspection and tests are made within a reasonable time or as provided in the specifications. No such inspection or testing shall constitute a waiver of any of Buyer's rights.

5. **Taxes:** Liability for all taxes or governmental charges imposed by federal, state, provincial or local law relating to this transaction (except those specifically imposed upon Buyer) shall be assumed and paid by Seller.

6. **Health, Environment and Safety:** If any part of the goods or services are to be provided at Buyer's premises, then Seller shall comply with the Drug Free Workplace Act, and Seller and its employees, agents and subcontractor shall be subject to and comply with all applicable prohibitions and restrictions of Buyer's Drug and Alcohol Policy; Health, Environment and Safety Policy; Core Environmental Responsibilities of Employees and Contractors; and applicable health, environmental, safety, security and confidentiality rules at the premises. Seller shall immediately cause to be removed from Buyer's premises any employee, agent or subcontractor of Seller who violates any such policy or rule.

7. **Warranties:** Seller warrants that all goods and services supplied under this order shall: (a) conform to all specifications, drawings, samples or other descriptions requested or referenced by Buyer; (b) be delivered and performed in a safe and responsible manner; (c) be of quality and workmanship consistent with the highest standards of the trade; (d) be of uniform grade and consistency; (e) be merchantable and free from all defects; (f) be fit for the purposes intended; (g) be free from liens and encumbrances with good title conveyed; and (h) be manufactured, contained, packaged, labeled, transported or otherwise provided in accordance with all applicable laws, regulations, permits and industry standards. Seller also warrants that it shall obtain and assign



or otherwise provide to Buyer the benefits of warranties provided by manufacturers or suppliers of material or equipment incorporated into the goods or services, and shall perform its responsibilities so that such warranties remain in full effect.

8. Intellectual Property: Seller warrants that its furnishing of the goods sold hereunder, the method of manufacture thereof, and the use or resale of such goods do not infringe any United States or foreign patent, copyright, trademark or trade secret. Any and all intellectual property arising out of anything done pursuant to this order shall be assigned by Seller to Buyer without cost or expense to Buyer and Seller agrees to take appropriate action to assign such rights. Seller and its successors and assigns shall defend, indemnify, and hold harmless Buyer and Buyer's affiliates and coventurers, and each of their respective affiliates, shareholders, directors, officers, employees, agents and insurers, harmless from and against all claims, judgments, losses, costs (including attorney's fees), suits, payments and causes of action of whatsoever kind asserted by or arising in favor of any person for or as a result of infringement of any patent(s) or copyrights, or misappropriation or misuse of trade secret(s) or other confidential information, based on or related to Seller's or Seller's subcontractors' sale, use or application of any equipment, article of manufacture, machine, computer software, composition of matter, or process (which is supplied or provided by Seller to Buyer) for its intended purpose or in reliance on advice or instruction from Seller or its subcontractors. The duty to defend shall apply to each and any such claims, even if such claims are erroneous, misguided, false or baseless. Buyer shall have the right at its discretion to select or approve counsel that is defending Buyer and Buyer retains the right to participate in any action in which the Buyer is named as defendant. Should Buyer be prevented from performing under any purchase order or contract by reason of legal proceedings based upon such claim of infringement, Buyer shall be relieved of its obligations to make payment for such goods, material, equipment or work not furnished as a result thereof. Notwithstanding any provisions hereof to the contrary, Seller and Buyer agree that damages under this provision are allowed as direct damages and shall not be

deemed to be special, indirect, or consequential. Buyer shall give Seller reasonable notice of any claim that Buyer contends falls within this indemnification.

9. Compliance with Laws: Seller warrants that: (a) all chemical substances furnished hereunder have been properly reported for the Toxic Substances Control Act inventory and otherwise comply with said Act; (b) none of the goods ordered constitutes an article or commodity which may not be introduced into commerce under the provisions of any law or governmental agency order or regulation (including, but not limited to, the Federal Insecticide, Fungicide and Rodenticide Act and the Federal Food, Drug and Cosmetic Act); and (c) Seller has complied with all applicable federal, state, provincial and local laws, regulations and orders as amended from time to time, in connection with the manufacture, sale, delivery and performance of the goods and services being purchased hereunder. Seller will certify its compliance with applicable laws or governmental agency orders or regulations in a form to be provided by Buyer.

10. Buyer's Remedies: If, in Buyer's judgment, the goods or services supplied by Seller are defective or nonconforming, or Seller fails to comply in any material respect with any of the terms, conditions or warranties of this order, then Buyer may, at its option: (a) terminate this order or any part hereof; (b) reject goods or services in whole or in part; (c) return goods to Seller and charge Seller with all costs, expenses and damages associated with such return; (d) purchase substitute goods or services elsewhere and charge Seller for any loss, costs and damages incurred; or (e) require Seller promptly to replace, repair or otherwise correct, without expense to Buyer, any nonconforming goods or services. Any such replacements, repairs or corrections shall be subject to the warranties stated herein. Any rights and remedies stated herein shall be in addition to any rights and remedies provided by law or equity, and shall survive inspection, test, acceptance and payment.

11. Indemnification: Seller shall defend, indemnify and hold harmless Buyer, its parents, subsidiaries, affiliates, successors and assigns,

and each of their respective agents, contractors, employees, officers and directors, from and against any and all losses, liabilities, damages, claims, royalties, fines, penalties, costs and expenses (including attorneys' fees) ("Claims") arising out of or relating to: (a) any breach by Seller of any covenant, representation or warranty set forth or referenced in this order; (b) the shipping or transporting of the goods purchased hereunder prior to passage of title to Buyer; (c) any act or omission of Seller, its agents, employees or subcontractors which relates to Seller's performance of this order (including, Claims of Seller's employees for which Seller's liability would otherwise be limited or barred under applicable workers' compensation or similar laws), unless resulting solely from the negligence of Buyer; (d) any violation or alleged violation by Seller of any federal, state, provincial or local law or regulation; or (e) any environmental or pollution damage arising out of or in connection with Seller's performance of this order (including any arising under, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act), unless such damage results solely from the negligence of Buyer. Buyer shall have the right to select counsel and control the defense and settlement of any Claims.

12. Limitation Of Liability: In no event shall Buyer be liable to Seller for any amount greater than the price paid for the portion of the goods or services as to which liability arises, or for any incidental, special or consequential damages. Seller assumes all risk of loss of or damage to its materials and equipment and any articles entrusted to Seller while in Seller's possession or under Seller's control. Seller shall promptly reimburse Buyer for the value of any article that belongs to Buyer. Any other damage shall be repaired promptly by Seller at Seller's expense.

13. Force Majeure: Neither party shall be liable to the other for failure to fulfill its obligations hereunder because of any cause beyond the reasonable control of the party so failing to fulfill its obligations and not due to its fault or negligence, including any practical inability to use the goods or services purchased hereunder or to make, use or sell any products

manufactured, formulated or processed from the goods or services. The impeded party shall give to the other party prompt notice and the estimated duration of such causes. In the event Seller is impeded from delivering goods or rendering services by reason of such causes, Buyer may elect to extend the period for delivery of goods or rendering of services by the period of delay resulting from such causes or to reduce the quantity of goods ordered hereunder by the deliveries or portions thereof omitted during such period; or if such causes continue for more than thirty days, Buyer may terminate this Order or the contract formed upon its acceptance.

14. Insurance: Seller shall obtain and maintain at its own expense the following insurance from companies acceptable to Buyer during the term of the contract formed upon acceptance of this order: (a) Worker's Compensation Insurance statutory limits; (b) Employer's Liability Insurance combined single limit of not less than \$1,000,000; (c) Commercial General Liability Insurance (including products liability, completed operations and contractual liability) combined single limit of not less than \$1,000,000; (d) Commercial Automobile Liability Insurance combined single limit of not less than \$1,000,000, including an MCS90 endorsement when interstate transportation of DOT regulated products is involved; (e) Excess Liability Insurance (Umbrella Form) supplementing (b), (c) and (d) with limits of \$5,000,000 each occurrence and \$5,000,000 aggregate. Any policy providing coverage described in (b) through (e) above shall be endorsed to name Buyer as an additional insured thereunder and shall be primary to any other coverage. All policies shall include a waiver of subrogation rights against Buyer. Seller shall furnish insurance certificates to Buyer evidencing that the above coverages requested by Buyer are in effect and providing that no policy may be canceled, terminated, allowed to lapse or be materially altered, without a minimum of 30 days advance written notice to Buyer.

15. Confidentiality: Seller shall treat this order and any contract formed upon its acceptance as confidential and shall not disclose the existence or substance hereof to any third party. If in connection with the provision of goods or services hereunder Seller becomes aware of any



confidential information of Buyer, Seller agrees not to disclose such information to any third party or to make use of such information, except to the extent necessary to perform hereunder or as required by law. Upon Buyer's request, Seller shall promptly return to Buyer all confidential information in tangible form, including drawings, samples, specifications or other documents provided by Buyer or prepared by Seller for Buyer.

16. Status: This order or the contract formed upon its acceptance shall not give rise to an employment, partner, joint venture or agency relationship between Buyer and Seller. Seller shall be an independent contractor and, as such, shall be responsible for the supervision of its employees, the payment of their salaries, wages and benefits, and the withholding and proper disposition of all payroll taxes related thereto.

17. No Liens: Seller agrees that it shall not file any liens as a result of supplying goods or rendering services hereunder and that it shall not permit its subcontractors or other suppliers, to file such liens. Upon Buyer's request, Seller shall furnish Buyer with a waiver of liens, in recordable form, as provided by law.

18. Termination: Buyer reserves the right to terminate or suspend this order or the contract formed upon its acceptance at any time without cause. In the event of such termination, Buyer's liability will be limited solely to payment for goods delivered or services rendered through the date of termination.

19. Miscellaneous: No waiver by either party of any right under this order or the contract formed upon its acceptance shall be construed as a waiver of any subsequent right, whether the same or different. Seller shall not assign this order or the contract formed upon its acceptance, or subcontract any of its obligations hereunder. This order and the contract formed upon its acceptance shall be governed by, and shall be interpreted and construed in accordance with, the laws of the Commonwealth of Pennsylvania without giving effect to the conflicts of laws principles thereof. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this order or the contract formed upon its acceptance. As between Buyer

and Seller, the Pennsylvania Contractor Payment Law shall not apply. This order sets forth the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, negotiations and dealings between the parties hereto. Neither course of performance, course of dealing, usage of trade nor oral promise shall be used to qualify, explain or supplement any of the terms of this order. Any change in this order or the contract formed upon its acceptance must be set forth in writing and signed by a duly authorized representative of the party to be bound. If any provision of this order shall be held invalid or unenforceable, the remaining provisions shall not be affected thereby.