



ELRINGKLINGER NORTH AMERICA, INC. AND AFFILIATED COMPANIES
(“Buyer”)

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. Scope and Acceptance.

(a) These General Terms and Conditions of Purchase (“Terms”) apply to all written and oral purchase orders and amendments thereto (collectively referred to as “Order”) issued by Buyer. All goods and services (whether or not ancillary to a sale of goods) (“Services”) to be provided under an Order are included in the term “Goods”.

(b) An Order is an offer. An Order for which written confirmation is requested may be accepted only by returning a copy thereof signed by Seller within seven (7) days of its date. However, Buyer may elect to consider Seller’s oral quotation or acceptance of the Order, Seller’s preparation to provide the Goods, or Seller’s delivery of the Goods, as an acceptance of the Order and its terms (and of no other terms) and enforce the Order. Buyer objects to any additional or contrary terms in Seller’s quotation or acceptance, and the terms herein shall be binding upon the parties. The Order is not a firm offer and may be revoked prior to acceptance.

(c) The Order does not constitute an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in the Order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of the terms and conditions of the Order. A reference to Seller’s proposal or quotation in the Order is not an acceptance to Buyer of terms which conflict with forms and documents provided by Buyer and a part of the Order. AN ATTEMPTED ACKNOWLEDGEMENT OF THE ORDER CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF THE ORDER IS NOT BINDING UPON BUYER UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING, AND BUYER HEREBY OBJECTS THERETO. No course of performance or conduct by Buyer shall be construed to waive, modify or otherwise adversely affect Buyer’s rights.

2. Prices.

(a) The Goods shall be furnished at the price in the Order. All prices shall be DDP destination (place of delivery).

(b) Seller warrants that the prices in the Order shall be complete, and no additional charges of any type shall be added without Buyer’s express written consent, including but not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating.

(c) Buyer shall not be liable to Seller for any expense paid or incurred by Seller unless agreed to in a writing signed by Buyer.

(d) Buyer may, but is not obligated to, withhold any federal, state or local income tax or payroll tax of any kind on behalf of Seller or Seller’s employees or subcontractors. Seller shall pay according to the law all applicable payroll and other taxes. Seller shall furnish, upon Buyer’s request, a certificate of compliance with payroll tax laws. Seller shall defend, indemnify and hold Buyer harmless for any failure to comply with payroll tax laws.

3. Delivery and Quantities.

(a) Delivery must be on the date indicated, if any, and otherwise as requested by Buyer. If delivery is "A.S.A.P." with a date indicated therewith, delivery must be on or before that date. If the Order is identified as a "Blanket" Order, deliveries are to be made only in quantities and at times specified in the delivery schedule set forth herein or as otherwise specified by Buyer. Buyer shall have no liability for payment of Goods delivered to Buyer which are in excess of quantities or scope specified in the Order or in the delivery schedules. Buyer may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments or performance of Services. Time is of the essence as to delivery.

(b) If the Order is identified as a "Blanket" order the quantities specified and delivery dates scheduled are estimated quantities and delivery dates. Unless otherwise specified in an Order for production parts, it is for 100% of Buyer's requirements subject to termination as provided in the Order. The purchase of the Goods specified is expressly contingent upon the issuance of a release by Buyer identifying the Goods to be purchased and providing delivery directions. When the Order is identified as a Blanket Order or deliveries are otherwise specified to be in accordance with Buyer's written releases, Seller shall not fabricate or assemble any Goods nor procure required materials, nor ship any Goods except to the extent authorized by such written releases or provisions of the Order specifying minimum fabrication and delivery quantities. Buyer may return over-shipments to Seller at Seller's expense for all packing, handling, sorting and transportation charges. Releases are included in the term "Order".

(c) Unless otherwise provided in an Order:

(i) All shipping, drayage, demurrage, storage, insurance, packing, and related charges shall be prepaid by Seller, and then billed to Buyer if Buyer is responsible for such charges according to the terms of the Order.

(ii) All Goods shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure the lowest transportation costs consistent with the requirements hereof and no additional charge shall be made to Buyer therefor. Packing slips must accompany each shipment.

(iii) Seller shall mark each package with the Order number, and where multiple packages comprise a single shipment each package shall be shown on packing slips, bills of lading, and invoices. If Buyer is obligated hereunder to pay for shipping, Seller shall be responsible for all extra charges incurred because of Seller's failure to follow Buyer's shipping instructions, including those related to delivery schedules, whether or not Seller's liability for general damages is excused under other provisions of the Order.

(iv) Seller shall describe the Goods on the bill of lading or other shipping receipt and route shipments in accordance with instructions issued by Buyer, if any.

(v) Seller shall pay all express and other charges necessary to speed delivery to enable Seller to meet the delivery schedule. Seller shall ship all late shipments by express or other priority methods of delivery at its expense as requested by Buyer.

4. Risk of Loss and Title to Goods.

(a) All shipments are at the risk of Seller, regardless of the F.O.B. point. If risk of loss is assumed by Buyer in writing, all risk casualty insurance must be provided by Seller for the benefit of Buyer. The cost of any insurance must be paid by Seller unless otherwise agreed to in writing by Buyer. Under no condition will the risk of loss be that of Buyer unless such insurance is provided. Title shall remain with Seller until the earliest of payment or receipt of the Goods by Buyer at its plant. Risk of loss shall not be governed by transfer of title.

(b) Title to all Goods shall vest in Buyer the earlier of the date of the Order and their identification to the Order. Identification shall occur not later than the date Seller acquires or begins manufacture of the Goods. Payment is dependent upon the satisfaction of all requirements regardless as to when title passes.

5. Specification Changes. Buyer reserves the right at any time to make changes in scope of work, quantities, drawings, specifications, packing, shipment, and other terms of an Order. Any purported change shall be binding on Buyer only if made in a writing signed by Buyer. Any difference in price or time for performance necessarily resulting from such changes shall be adjusted as determined by Buyer in its discretion, and the Order or delivery schedule shall be amended in writing accordingly, provided Seller makes demand for such adjustments within ten (10) days of receipt of Buyer's change. Time is of the essence for such demand. The price shall be adjusted to compensate only Seller for increased costs necessarily incurred as a result of the changes contained in an amendment to an Order. Seller may not substitute materials or change the specifications of the Goods in any way without written authorization from Buyer.

6. Inspection.

(a) All Goods shall be received subject to Buyer's right of evaluation, inspection and rejection. Buyer shall have a reasonable time, but not less than fourteen (14) days after delivery, to inspect delivered Goods prior to accepting the Goods. Defective Goods and Goods otherwise not in conformity with Buyer's specifications or the Order will be held for Seller's instructions at Seller's risk and, if Seller so directs, may be returned at Seller's expense. Goods returned as defective or nonconforming shall not be returned to Buyer without Buyer's approval. Transfer of title and payment for the Goods prior to inspection shall not constitute an acceptance thereof. Acceptance, whether or not it has been revoked, shall not release Seller's responsibility for latent defects, non-conformities, or warranty claims.

(b) All Goods (which term throughout the Order includes without limitation Services, raw materials, components, intermediate assemblies, end products and accessories such as tooling) shall be subject to evaluation, inspection and test by Buyer and its "Customer" (which term includes, without limitation, federal and state government, including their surveillance and/or regulatory agencies) to the extent practicable at all times and places, including the period of manufacture and the provision of Services, and in any event prior to final acceptance by Buyer and its Customer.

(c) If any inspection or test is made on the premises of Seller or its supplier, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and



convenience of the inspectors in the performance of their duties. All inspections and tests on the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay Seller.

(d) Seller shall provide and maintain an inspection and process control system acceptable to Buyer and its Customer covering the Goods. Records of all evaluation, inspection, and testing by Seller shall be kept complete and available to Buyer and its Customer during the performance of the Order and for such longer periods as may be specified in the Order, but not less than three (3) years after delivery of the Goods to Buyer.

7. **Marking.** Seller shall mark Goods, packaging, and packing as instructed by Buyer and in accordance with the standards of the Uniform Commercial Code. Markings shall be in English, bar code, and such other form as determined by Seller.

8. **Electronic Data Interchange.** Seller shall, at Buyer's request, connect to Seller's electronic data interchange. All transactions initiated under Electronic Data Interchange ("EDI") shall be governed by the terms contained in Buyer's transmissions, except that standard terms and conditions which may be a part of Buyer's EDI system shall be superseded by the terms of this Agreement. A transmission shall be deemed signed if it contains the name of the individual authorizing the transaction.

9. **Confidential Information.**

(a) Seller shall keep confidential any technical, process or economic information derived from drawings, specifications and other data furnished by Buyer in connection with the Order and shall not divulge, directly or indirectly, such information for the benefit of any other party without obtaining Buyer's prior written consent. Except as required for the efficient performance of the Order, Seller shall not use such information or make copies or permit copies to be made of such drawings, specifications, or other data without the prior written consent of Buyer. If any reproduction is made with prior consent, notice referring to the requirements of this Section shall be provided thereon. Upon completion or termination of the Order, Seller shall promptly return to Buyer all materials incorporating any such information and any copies thereof, except for one record copy.

(b) Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer, and which in any way relates to the Goods, shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary information, and shall be acquired by Buyer, free from any restrictions (other than a claim for patent infringement), as part of the consideration for the Order.

10. **Intellectual Property.**

(a) Seller shall defend and indemnify Buyer, its successors, assigns, customers and users of its products, against all suits at law or in equity and from all damages, claims and demands for actual or alleged infringement of any domestic or foreign patent, copyright or other property right by reason of the use or sale of the Goods. If the use or sale of the Goods are enjoined, Seller shall, at its own expense and at its option, either: procure the right to continue using the Goods, or replace same with a non-infringing equivalent; or remove the Goods and refund the purchase price and the transportation and installation costs thereof. Seller grants to Buyer and its subsidiaries and affiliates



an irrevocable, royalty free license to repair, rebuild and relocate and to have repaired, rebuilt and relocated the Goods. Seller grants to Buyer, its subsidiaries and affiliates an irrevocable, paid-up worldwide license under each copyright of Seller that is applicable to any intellectual property whatsoever furnished to Buyer in connection with the Goods. Title to any developments made by Seller while in performance of the Order which enhance Buyer's products or technology shall belong to Buyer.

(b) All reports, manuals, programs, tapes and any other material prepared by Seller's employees or subcontractors under the Order and all other work products of Seller's employees or subcontractors shall belong exclusively to Buyer.

(c) All writings, discoveries, designs, mask works, inventions, improvements and derivative works whether copyrightable, patentable or not which are written, conceived, created, discovered or made by Seller's employees or subcontractors in the course of the Services performed under the Order shall be promptly disclosed to Buyer and shall be Buyer's sole property.

(d) Seller shall sign and execute, and require Seller's employees or subcontractors to sign and execute all assignments and other papers necessary to vest the entire right, title and interest in such writings, discoveries, designs, mask works, inventions, improvements and derivative works in Buyer, and do all lawful acts and sign all assignments and other papers Buyer may reasonably request relating to applications of patents, mask works, registrations, trademarks, and copyrights, both United States and foreign, or relating to the conduct of any interference, litigation or other controversy in connection therewith, provided that all expenses incident to the filing of such applications, the prosecution thereof and the conduct of any interference, litigation or other controversy shall be paid by Buyer.

(e) Seller shall require Seller's employees or subcontractors assigned to perform the Services for Buyer to sign Buyer's Intellectual Property Rights Agreement form attached and made a part hereof as Exhibit A. Seller shall witness the signing of such agreements for Buyer, to maintain such signed agreements on file for a period of five (5) years after the completion of the Services under the Order, and, at Buyer's request at any time before the end of that five (5) year period, to deliver any or all such signed agreements to Buyer.

(f) Seller grants to Buyer, its subsidiaries and affiliates a non-exclusive, world-wide, royalty-free, paid-up license under any trade secrets, patents or mask work registrations, domestic as well as foreign, which it may now own, control or hereafter acquire to make, have made, use and sell, including:

(i) All pre-existing materials of Seller incorporated into any of the deliverables to which title shall vest in Buyer in accordance with these Terms;

(ii) All devices substantially as designed, developed or constructed under the Order;

(iii) All equipment and tooling and methods of manufacture or industrial processes developed hereunder and ;

(iv) All other equipment and tooling and methods of manufacture or industrial processes adapted to be performed by any of said devices or usable in connection therewith.

11. **Warranty.**

(a) Seller warrants and represents to Buyer and its customer that all Goods shall be: (i) of merchantable quality; (ii) free from all defects in design, workmanship and materials; (iii) fit for the particular purposes for which they are purchased; (iv) in strict compliance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Buyer; and (v) provided with due care.

(b) In addition, Seller warrants that the Services shall be performed in a diligent, skillful and workmanlike manner, satisfactory to Buyer, and consistent with the highest professional standards and any standards established by Buyer for work done by Buyer's employees. Under no circumstances shall Services performed by Seller's employees or subcontractors be of less quality than as that performed by Buyer's own employees. Buyer shall review the results of the Services provided and, if such results are unsatisfactory, Buyer shall advise Seller. Seller shall immediately undertake at its sole expense whatever steps may be required by Buyer to remedy such unsatisfactory results. Seller warrants that Seller may freely provide the Services contemplated by the Order without restriction. Seller shall not enter into any agreement for services comparable to or conflicting with the Services to be provided under the Order with any third party during the term of the Order.

(c) Seller warrants it will furnish competent employees or (with Buyer's prior written approval) subcontractors to perform the Services specified herein. Upon receipt of notification from Buyer, Seller at its sole expense shall remove Seller's employee(s) or subcontractor(s), which, in Buyer's opinion, do not perform in a satisfactory manner the required Services and, at Buyer's option, shall replace such employees or subcontractors with other employees or subcontractors satisfactory to Buyer. This shall not constitute Buyer's assumptions of control over Seller's employees or subcontractors.

(d) Seller warrants that Seller's employees or subcontractors, when on Buyer's or Buyer's customers' premises, shall comply with all of Buyer's or its Customers' rules, regulations and policies. Buyer may bar any employee, representative, agent or subcontractor of Seller from Buyer's premises for failure to obey such rules. At the request of Buyer, Seller shall promptly remove any such person who does not comply with such rules

(e) Any attempt by Seller to limit, disclaim, or restrict any warranties or any remedies of Buyer, by acknowledgement or otherwise, in accepting or performing the Order, shall be null, void, and ineffective unless placed in the Order. All of Seller's warranties are cumulative with any others provided by law. Approval by Buyer of Seller's design drawings, specifications, samples, etc. does not waive or limit any warranty of Seller.

(f) Seller warrants and represents to Buyer that the prices charged and to be charged Buyer are the same or lower than all prices charged others for the Goods or similar goods during the twelve (12) months prior to the date of the Order. Prices charged in violation of this clause shall be reduced and any overpayment refunded by Seller to Buyer.

12. Indemnity and Insurance.

(a) Seller shall defend and indemnify Buyer against all liabilities, claims or demands for injuries or damages to any person or property arising out of the performance of the Order, by Seller, its servants, employees, contractors, agents, or representatives.

(b) Seller shall furnish an insurance carrier's certificate showing that Seller has adequate insurance coverage in the following minimum amounts: workers compensation - statutory limits for jurisdictions in which work is to be performed; employer's liability - \$100,000.00; general liability - bodily injury \$3,000,000; automobile liability - bodily injury \$1,000,000 per person and \$3,000,000 per occurrence and property damage \$250,000.00. Liability coverage shall include completed products and operations coverage. Liability coverage shall include a completed products and operations coverage. If Seller is engaged in any activities dealing with pollutants or other hazardous materials or instrumentalities which Buyer in its sole discretion determines hazardous, Seller shall provide additional appropriate insurance coverage. Seller shall furnish to Buyer a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect, are primary, each policy, with the exception of workers compensation is endorsed to provide waivers of subrogation in favor of Buyer, that Buyer is an additional insured, and will not be canceled or materially changed until ten (10) days after prior written notice has been delivered to Buyer. The certificates must set forth the amount of coverage, number of policy and date of expiration. If Seller is a self-insurer, the certificate of the Department of Labor of the jurisdiction in which any labor is to be performed showing workers compensation coverage must be furnished to Buyer by Seller. The purchase of such insurance coverage or the furnishing of Certificates shall not be a satisfaction of Seller's liability hereunder, or in any way modify Seller's obligation to indemnify Buyer.

(c) If Seller's work under the Order involves Services by Seller on the premises of Buyer or one of its Customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such Services, unless any such injury or damage is due solely and directly to Buyer's negligence, as the case may be, shall defend and indemnify Buyer against any claim which may result in any way from any act or omission of Seller, its agents, employees or subcontractors.

(d) If it shall be alleged that failure of the Goods supplied by Seller to conform to Seller's warranty is a proximate cause of any damage, losses, injuries or claims asserted in such lawsuits, then Seller shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees, agents and other representatives from and against any and all claims for loss, property damage, death or personal injury, including, without limitation, product liability claims, directly resulting from such breach of Seller's warranties. If Buyer or Seller shall be sued by any third party, including original equipment manufacturers, distributors or dealers, for loss, damage to property or for personal injury or death that is alleged or may have been caused by a failure of Goods supplied by Seller to conform to Seller's warranties or other theory, Seller and Buyer will cooperate with each other and provide technical assistance in defending such suit, provided that Buyer and Seller give the other prompt notice of any such suit. Buyer and Seller shall use their best efforts to defend and minimize any damages and costs in connection with such suit or a settlement thereof. Seller waives the application of the doctrine of comparative negligence and contributory negligence.

13. Termination for Convenience. In addition to any other rights of Buyer to cancel or terminate the Order or any releases issued pursuant to the Order, Buyer may at its option immediately terminate all or any part of the Order or any releases issued pursuant to the Order for convenience, at any time and for any or no reason by giving written notice to Seller. Upon such termination for convenience, Buyer shall pay to Seller the following amounts without duplication: (i) the Order price for all Goods which have been completed in accordance with the Order and not previously paid for; and (ii) the actual direct costs of work in process and raw materials incurred by Seller in furnishing the Goods under the Order or any releases issued pursuant to the Order to the extent such costs are reasonable in amount and are properly allowable or apportionable, under generally accepted accounting principles, to the terminated portion of the Order or any releases issued pursuant to the Order; less, however, the reasonable value or cost (whichever is higher) of any Goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed Goods or materials. Notwithstanding the foregoing, Buyer shall not be liable to pay for finished Goods, work in process or raw materials fabricated or processed by Seller in amounts in excess of those authorized in delivery releases (if required by the Order), for any undelivered Goods which are Seller's standard stock or which are readily marketable, or for any finished Goods which remain undelivered after request by Buyer. Payments made under this Section shall not exceed the aggregate price payable by Buyer for finished Goods which would be produced by Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this Section, 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 loss of anticipated profit, unabsorbed overhead, mobilization or demobilization costs, interest on claims, product development and engineering costs, facilities and equipment, rearrangement cost or rental, compression, unamortized depreciation costs, and general and administrative burden charges arising from termination of the Order. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer or its agent shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller. Buyer, however, shall have no obligation to Seller if Buyer terminates its purchase obligations under the Order or any releases issued pursuant to the Order because of default by Seller. Payment under this Section shall constitute the only liability of Buyer in the event the Order is terminated.

14. Default and Remedies.

(a) Seller shall be in default: (1) if Seller fails to perform any obligation within the time specified herein or any extension thereof or upon Buyer's demand if no time has been specified; or (2) if Seller fails to perform any of the other provisions of the Order, or so fails to make progress as to make Buyer reasonably apprehensive about Seller's ability or willingness to perform its obligations; and if in either of these two circumstances Seller does not cure such failure within a period of five (5) days or such longer period as Buyer may authorize in writing after receipt of notice from Buyer specifying such failure. Upon such default, Buyer may by written notice of default to Seller (i) terminate the whole or any part of the Order; and (ii) procure alternative goods or services upon such terms as it shall deem appropriate. Seller shall continue performance of the Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar Goods or services and other direct, incidental, and consequential damages. As an alternative remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect (1) to extend the delivery



schedule and/or (2) to waive other deficiencies in Seller's performance in which case an equitable reduction in the Order price shall be established by Buyer to compensate Buyer for its damages. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of the Order, Seller shall promptly notify Buyer in writing. The rights and remedies of Buyer provided in this Subsection shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Order.

(b) If any of the Goods ordered are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of the Order, Buyer, in addition to such other rights, remedies and choices as it may have under the Order or by law, at its option and sole discretion may: (i) reject and return such Goods at Seller's expense; or (ii) require Seller to inspect the Goods and remove and replace nonconforming Goods with Goods that conform to the Order. If Buyer elects option (ii) above and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option and Seller's cost, inspect and repair or replace the Goods.

(c) Seller grants Buyer a security interest in the Goods to secure Seller's performance and return of any deposits, and grants Buyer an irrevocable power of attorney to execute and file appropriate financing statements evidencing such interest.

(d) Seller's continued holding of the Goods and property delivered to Seller after proper demand has been made for delivery will substantially impair the value of the Goods and property, and Buyer shall be entitled to a court order for possession.

(e) In the event of any recall or similar campaign involving the Goods, whether initiated by Buyer, Seller, an original equipment manufacturer, or any regulatory or other governmental body, both Buyer and Seller shall use their best efforts to minimize costs in connection with such campaign. If it shall be determined that failure of Goods supplied by Seller to conform to Seller's warranty is a proximate cause of any such campaign, Seller shall defend, indemnify and hold harmless Buyer, its affiliates, subsidiaries, directors, officers, employees, agents and other representatives from and against all reasonable expenses and costs of such recall.

(f) Buyer's remedies herein provided shall be cumulative and additional to any other or further remedies provided in law or equity, including, but not limited to, the recovery of direct, incidental and consequential damages and the entry of injunctive relief, but Buyer should be provided with only one full recovery of all of its damages and enforcement of all its rights. No waiver of a breach of any provision of the Order by Buyer shall constitute a waiver of any other breach, or of the breached provision itself.

(g) Buyer shall not be responsible for lost revenue, lost profit, increased costs or other incidental, consequential, punitive, exemplary, or indirect damages of Seller, its employees or subcontractors arising out of contract, tort or otherwise. Under no circumstances shall Buyer be liable other than for payment of Goods provided as required by the Order.

15. Limitations of Seller's Liability. Seller shall not be liable for incidental consequential, or other indirect damages because of delays or other defaults due to causes beyond its control and without its fault or negligence. However, any such delay due to the default of Seller's subcontractor, material supplier or carrier will be excused as to consequential damages only if the delay is (a)

beyond the control, (b) without the fault or negligence of Seller and its subcontractors, material suppliers and carriers, and (c) if Seller establishes that it could not obtain components, materials or services from any other source in time to meet the delivery schedule. Further, this Section shall apply only if: (i) Seller provided immediate written notice to Buyer of any delay which Seller does or could reasonably anticipate, of the length thereof, and of the reasons therefore; and (ii) Seller provides thirty (30) days written notice to Buyer of the expiration date of its collective bargaining agreement and those of its subcontractors and suppliers which expire prior to anticipated delivery date of the Goods. This limitation of consequential incidental damages shall not affect Buyer's right to cancel or any other remedy.

16. Material Furnished by Buyer and Its Customer. Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by Buyer or its customer or paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Buyer or its customer and held in trust for the benefit of Buyer or its customer. Such property, and wherever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as the property of Buyer or its customer and shall be safely stored separate and apart from Seller's property. Buyer may enter Seller's premises and inspect such property and all related records during normal business hours. Seller shall not substitute any of its own property for Buyer's or Buyer's Customer's property and shall not use such property except in filling the Orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer or its customer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and shall redeliver it to Buyer or its customer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. Seller shall deliver to Buyer a Certificate of Insurance when requested. All such property not used in the manufacture of the Goods shall, as directed, be returned to Buyer at Buyer's expense and if not accounted for or so returned, shall be paid for by Seller to Buyer. Seller shall have no right to retain possession of such property to secure payment of amounts owed or for any other reason.

17. Seller's Tools. Unless Buyer agrees otherwise, Seller at its own expense shall furnish, keep in good condition, and replace when necessary all tools, jigs, dies, gages, fixtures, molds, and patterns ("Tools") necessary for the production of the Goods. The cost of changes to the Tools necessary to make design changes and specification changes authorized by Buyer shall be paid for by Buyer. Seller shall insure the tools with full fire and extended coverage insurance for the replacement thereof. Seller grants Buyer an irrevocable option to take possession of and title to the Tools that are special for the production of Goods upon payment to Seller of the book value thereof less any amounts Buyer has previously paid to Seller for the cost of such Tools; provided, however, that this option shall not apply if such Tools are used to produce goods that are not standard stock of Seller or if substantial quantities of like goods are being sold by Seller to others.

18. Insolvency. If Seller ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Buyer may terminate the Order without liability, except for deliveries previously made or for Goods covered by the Order then completed and subsequently delivered in accordance with the terms of the Order.



19. Compliance With Laws.

(a) Seller shall provide to Buyer appropriate installation, operation and maintenance manuals in English covering the Goods. Seller shall also provide Buyer with any and all specific warnings or instructions regarding the safe installation, operation and maintenance of the Goods which should be reasonably provided to the ultimate users of the Goods. Seller shall promptly furnish to Buyer (i) upon written request a list of all materials in the Goods and, as necessary, the quantities of such and (ii) thereafter information concerning any change in the composition of the Goods. Seller shall provide Material Safety Data Sheets as appropriate for the Goods.

(b) Seller shall comply with all applicable federal, state and local laws, statutes, rules, regulations and ordinances, including, without limitation, laws pertaining to equal employment opportunity, employment practices, immigration, and export, and obtain all necessary permits, certificates and licenses to perform the Services.

(c) Seller shall comply with any provisions, representations or agreements, or contractual clauses required thereby to be included or incorporated by reference or operation of law in the contract resulting from acceptance of the Order and dealing with, Equal Employment Opportunity, Employment of Veterans, Employment of the Handicapped, Employment Discrimination Because of Age, Utilization of Disadvantaged Business Enterprises, and the related Acts and Executive Orders as now or hereafter amended or codified.

(d) Seller warrants that it is in compliance with the requirements for non-segregated facilities set forth in 41 CFR Chapter 60 1.8 and is an equal opportunity employer.

(e) Seller warrants that each chemical substance constituting or contained in the Goods sold is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et. seq.) as amended, and that the Goods are not hazardous under any state or federal law except as clearly stated on the shipping and storage containers. Seller shall defend and indemnify Buyer from any claim alleging improper or illegal dispositions of the Goods except for grossly negligent dispositions.

(f) Seller warrants that the Goods shall be in compliance with applicable sections of the Federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 et seq.) as amended, and the Federal Hazardous Substances Act (15 U.S.C. 1261 et. seq.) as amended, and lawful standards and regulations thereunder.

(g) Seller warrants that the Goods shall be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a) and Seller shall insert a certificate to that effect on all invoices submitted in connection with the Order.

(h) Seller shall comply with all applicable industry, federal, state or local laws, rules, regulations or ordinances and standards as to the Goods and otherwise in the performance of the Order.

20. Non-Assignment. Assignment of the Order or any interest herein or any payment due or to become due hereunder, without the written consent of Buyer, shall be void.



21. **Set-Off.** Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer in connection with the Order.

22. **Foreign Purchases.** The following applies to all transactions involving imported Goods:

(a) Seller warrants that all sales made hereunder are or will be made at not less than fair value under the United States Anti-Dumping Law (19 U.S.C. Sec. 160 et. seq.) and Seller will indemnify, defend and hold Buyer harmless from and against any costs or expenses (including but not limited to any anti-dumping duties which may be imposed) arising out of or in connection with any breach of this warranty.

(b) Seller agrees that Buyer will not be a party to the importation of the Goods, that the transaction(s) represented by the Order will be consummated subsequent to importation, and that Seller will neither cause nor permit Buyer's name to be shown as "Importer of Record" on any customs declaration.

(c) Upon request and where applicable, Seller shall provide Buyer Customs Form 7552 entitled "Certificate of Delivery" properly executed. Upon request, Seller shall furnish promptly all documents required for customs drawback purposes, properly completed in accordance with government regulations applicable thereto. Unless otherwise stated herein, all customs drawback will be credited to Buyer.

(d) Upon request, Seller shall furnish promptly certificates of local value added in accordance with applicable government regulations.

(e) The Convention on the International Sales of Goods shall not apply.

(f) The Order includes all related customs duty and import drawback rights, if any, including rights developed by substitution and rights that may be acquired from Seller's supplier(s) that Seller can transfer to Buyer.

23. **Applicable Law, Waiver, and Jurisdiction.** The Order is to be construed and enforced under the laws of _____. The parties adopt the law governing sales of goods in said jurisdiction at the time of the Order as the law governing the sale of Goods hereunder. No claim or right arising from a breach hereof can be discharged in whole or in part by a waiver or renunciation unless supported by additional consideration and in writing signed by the aggrieved party. The parties consent to the jurisdiction and convenience of the courts in the Circuit Court in which the headquarters of the Buyer are located. Any declaration of unenforceability of a provision hereof shall be as narrow as possible and shall not void the Order or any other provision. The Convention on the International Sales of Goods shall not apply.

24. **Publicity.** Without obtaining the prior written consent of Buyer, Seller shall not in any manner advertise or publish the fact that Seller has contracted to furnish Buyer (or Buyer's customers) the Goods or services herein ordered, or use any trademark or trade names of Buyer (or Buyer's customers) in Seller's advertising or promotional materials. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any Goods or services



covered by the Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

25. Ethical Standards. With respect to its role as vendor to Buyer, including any interaction with any employee of Buyer, Seller shall not: (1) give or offer to give any gift or benefit to said employee; (2) solicit or accept any information, data, services, equipment, or commitment from said employee unless same is (i) required under a contract between Buyer and Seller, or (ii) made pursuant to a written disclosure agreement between Buyer and Seller, or (iii) specifically authorized in writing by Buyer's management; (3) solicit or accept favoritism from said employee; and (4) enter into any outside business relationship with said employee without full disclosure to, and prior approval of Buyer's management. As used herein: "employee" includes members of the employee's immediate family and household, plus any other person who is attempting to benefit from his or her relationship to the employee; "Seller" includes all employees and agents of Seller; "gift or benefit" includes money, goods, services, discounts, favors and the like in any form but excluding low value advertising items such as pens, pencils and calendars; "vendor" includes prospective, current and past vendors; and "favoritism" means partiality in promoting the interest of Seller over that of other vendors. Such activity by Seller shall constitute breach of contract by Seller of every contract and Order with Buyer and may further result in Seller's debarment from doing business with Buyer.

26. Entire Agreement. The Order (including these Terms) is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior agreements, written or oral. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term used in the Order. All modifications must be in a writing signed by Seller and Buyer, except as otherwise provided in the Order.

27. No Implied Waiver. The failure of either party at any time to require performance by the other party of any provision of the Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision of the Order constitute a waiver of any succeeding breach of the same or any other provision.

28. Relationship of Parties. Seller and Buyer are independent contracting parties and nothing in the Order shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller shall recruit, interview, test, select, hire, train, counsel and discipline the personnel to be assigned to perform Services for Buyer under the Order. Personnel furnished by Seller, whether or not approved by Buyer, shall be and will remain Seller's employees or subcontractors, and under no circumstances are such employees or subcontractors to be considered Buyer's employees or agents. Neither Seller nor its employees or subcontractors shall participate in any employee pension, health, or other benefit plan of Buyer. Seller shall defend and indemnify Buyer against any liability or claims by Seller or its employees or subcontractors related to such plans.

29. Severability. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, or any other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of the Order shall remain in full force and effect.