



## **SUPERIOR INDUSTRIES INTERNATIONAL, INC. - TERMS AND CONDITIONS OF PURCHASE**

November 1, 2017 version – Versions can be found at [www.supind.com/suppliers/tcs.html](http://www.supind.com/suppliers/tcs.html)

### **A. AGREEMENT & ACCEPTANCE**

**1. Agreement & Acceptance.** The acceptance of each purchase order, blanket or spot buy (“Order”) from Superior Industries International, Inc. or its affiliates or subsidiaries (“Buyer”) by acknowledgement, written acceptance, or shipment of goods, performance or commencement of services shall constitute acceptance of these Terms and Conditions (“Terms”). A Buyer affiliate or subsidiary that issues an Order will be severally but not jointly liable under the Terms. The Order and Terms constitute the entire agreement (“Contract”) between the parties. Any and all terms and conditions proposed by Seller which differ from or are in addition to these Terms are hereby deemed to be variations and alterations and are not binding upon Buyer or part of these Terms. Any modifications or changes to this Order shall be binding only if it is in writing and signed by the parties.

### **B. PRICING, PAYMENT, INVOICING, TAXES, & SET-OFF**

**2. Pricing, Payment, & Invoicing.** The pricing for the goods and/or services set forth in the Order are firm, fixed prices unless otherwise agreed to in writing and signed by the parties. The Order shall include the applicable currency, and if not specified, the applicable currency is of the country of Buyer's purchasing legal entity indicated on the Order. Buyer will pay proper invoices according to the payment terms stated in the Order, if any. Such payment terms apply to the date invoices are received at the facility designated by Buyer when Seller has complied with all its obligations provided in the Order, or in the case of services, the date that the Buyer receives Seller's invoice following completion of the services. Unless otherwise provided in the applicable Order, payment terms shall be net sixty (60) days from the receipt of an accurate invoice and conforming goods and/or services. No price increases or additional charges of any kind shall be allowed unless signed by the parties. Further, Seller represents and warrants to Buyer that the goods and services, of the same quality, are sold to Buyer at Seller's lowest prices offered or sold to other customers. Buyer reserves the right, at its sole discretion, to audit documentation regarding labor and material costs, and Seller agrees to provide this documentation to Buyer within thirty (30) days of Buyer's request. If Buyer receives an offer from another Seller, to supply goods and/or services at a total cost (calculated by Buyer's) below Seller's offer, Buyer may present documentation detailing such lower total cost to Seller and Seller will match such total cost within ten (10) days of receipt of documentation and the modified pricing will apply to the remaining contract, or Buyer shall have the right to purchase the goods and/or services from the other Seller.

Upon prior notification to Seller, Buyer may also assign to a third party the right to purchase goods under the Order for the benefit of Buyer, and Seller agrees to provide the third party with any and all of the same terms and conditions as provided to Buyer. At any time, Buyer may assign the purchase to another third party or assume the right to purchase under such assigned Order. Seller shall notify Buyer of any non-compliance by the third party, and Buyer will take the commercially reasonable steps to resolve the non-compliance.

**3. Taxes & Set-off.** Except as otherwise be provided on the face of the Order, the purchase price includes, and Seller shall pay all federal, state, provincial or local taxes, duties and fees imposed by any foreign or domestic governmental authority applicable to provision of the goods and/or services. Unless a valid tax exemption certificate is provided, Seller's invoice shall include applicable sales, use, federal, state, or local taxes. Buyer shall not be responsible for any taxes that are Seller's responsibility, and Seller shall indemnify, defend, and hold harmless Buyer against any and all claims arising from such payment. In addition, Buyer may recoup or setoff any amounts that are or will be owed, due, or payable to Seller or its affiliates under this contract or any other agreement.

### **C. DELIVERY, CHANGES, & FORCE MAJEURE**

**4. Delivery.** Seller shall deliver the goods and/or services in the quantity(ies), location(s), and on the date(s) specified in the Order. Any premium shipping expenses and other related expenses necessary to meet Buyer's delivery schedules shall be Seller's sole responsibility. All shipments of goods shall be DDP, unless otherwise noted on the Order and title shall not pass to Buyer until Buyer has received and accepted the goods at its facility. Deliveries in advance of Buyer's specified delivery dates or of quantities in excess of those authorized by Buyer shall be at Seller's risk of loss, and may, at the sole option of Buyer, be returned to Seller at Seller's expense or disposed of by Buyer without any liability to Buyer. Buyer shall have no obligation to accept any partial shipments and, if accepted, Buyer shall only be obligated to pay for conforming goods and/or services actually delivered and accepted.

**5. Changes.** Seller acknowledges and agrees that Buyer may at any time make written changes in any one or more of the following: (a) instructions, part numbers, specifications, sub suppliers, drawings and/or data incorporated in this Order; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; (e) manner of delivery; and (f) quantity(ies). If no delivery date or quantity is specified on the Order, Seller will request such information from Buyer before attempting to perform or deliver the Order. If the changes cause an increase or decrease in cost or time required for performance, then Seller may be entitled to an adjustment in price or delivery schedule provided Seller requests such adjustment within ten (10) days from the date of receipt of the changed order and Buyer accepts such adjustment, otherwise such adjustment will be deemed waived by Seller. If delivery is not made in the quantity(ies) and/or times specified in the Order, then Buyer, reserves the right without liability and in addition to all other rights and remedies available under the law, to (a) direct expedited routings of the goods and/or services (the difference in routing costs shall be paid by Seller); and/or (b) terminate the contract with respect to the goods and/or services not yet shipped and to purchase substitute goods and/or services elsewhere at Seller's expense. Further, Buyer will not have any liability for payment for goods and/or services delivered to Buyer which are in excess of quantities specified in the Order and such rejection, return, and damages arising from the excess goods shall be at Seller's expense, including charges for packing, handling and transportation. Seller shall comply with Buyer's Routing Guidelines which can be found on Buyer's Supplier Exchange Portal and will be provided to Seller

upon request. Seller shall not make any changes in the specifications, manufacturing location, subcontractors, physical composition of, or processes used to produce the goods and/or services without prior written consent from Buyer.

**6. Force Majeure.** Unless caused by an event that is beyond the reasonable control of the Seller, and without Seller's fault or negligence, including but not limited to acts of God, actions by governmental authorities, national emergencies, natural disasters, riots, fires, floods, storms, explosions, acts of terrorism, war, sabotage, pandemics or epidemics ("Force Majeure Event"), but not including delays or defaults due to labor problems, inability to obtain financing, increases in the cost of raw materials or energy, negligence or other fault of the party claiming the delay. Time is of the essence with respect to delivery by the Seller. Seller shall immediately notify Buyer of any Force Majeure Event or other event that could potentially delay the delivery of the goods and/or services as specified under the Order, however, such notification shall not reduce or limit Seller's liability to Buyer, and Buyer will have the right to cancel the contract without further liability to Seller. In addition, during such delay or failure to perform by Seller, Buyer may do any or all of the following: (a) purchase substitute goods from other available sources, in which case the quantities under this Order will be reduced by the quantities of such substitute goods and Seller will reimburse Buyer for any additional costs to Buyer of obtaining the substitute goods compared to the prices set forth in the Order, (b) require that Seller provide substitute goods from other available sources (including Seller's stock or inventory) in quantities and at times Buyer requests and at the prices set forth in the Order, (c) require that Seller provide any work-in-process and raw materials useful in the manufacture of the goods in Seller's inventory or stock at Seller's actual cost, and (d) require that Seller provide substitute raw materials and components useful in the manufacture of the goods from available sources in quantities and at times Buyer requests at the lesser of Seller's actual cost and the appropriate pro rata portion of the price of the Goods.

#### **D. QUALITY, INSPECTION, NON-CONFORMANCE, & ACCEPTANCE**

**7. Quality.** Seller will provide the goods and/or perform the services in accordance and in compliance with the instructions, specifications, drawings and/or data previously provided by Buyer ("Buyer's Specifications"). Seller will comply with Buyer's Supplier Requirements Manual, which will be provided to Seller upon request, and will provide, maintain, and enforce the necessary requirements to secure the quality and manufacturing of the goods and/or services. Seller will permit Buyer, its representatives, and consultants to enter Seller's facilities at reasonable times to inspect the facilities and any goods, inventories, work-in-process, materials, machinery, equipment, tooling, and other items and processes related to Seller's performance under the contract.

**8. Inspection.** Nothing contained in the Order or these Terms shall relieve the Seller from the obligation of testing, inspection, and quality control. Seller will ensure that Buyer and its representatives and consultants have the same inspection rights with respect to Seller's suppliers. Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and/or testing. No inspection by Buyer will constitute acceptance by Buyer of any work-in-process or finished goods.

**9. Non-Conformance.** Buyer may reject any or all of the goods and/or services which are, in Buyer's judgment, defective or do not conform to Buyer's specifications, this Order, or Seller's warranties (express or implied). Buyer will have thirty (30) days from receipt of goods and/or services to accept or reject such goods and/or services delivered by Seller. Any rejection shall be communicated by written notice of rejection delivered by Buyer to Seller within the thirty (30) day period. Goods not accepted will be returned to Seller for full credit or replacement at Buyer's option and at Seller's risk and expense, including charges for packing, handling and transportation both ways. No replacement of rejected goods shall be made by Seller unless specified by Buyer in writing and such replacement shall be made at no increase in price. If services fail to conform to the requirements of the Order or Buyer's specifications, Buyer may require Seller to perform the services again in conformity with the Order or Buyer's specifications, at Seller's expense. When defects in services cannot be corrected by re-performance, Buyer may equitably reduce the price to reflect the reduced value of the services performed. Seller shall bear all risks after notice of rejection and shall be liable for all damages that are caused by such defective or non-conforming good and/or services. Buyer's right to exercise any remedy or to relieve Seller of any of its warranties or obligations shall not be waived or otherwise adversely affected by Buyer's unloading, accepting, making payment for or using non-conforming goods and/or services.

**10. Acceptance.** Acceptance of all or any part of the goods will not be deemed to be a waiver of Buyer's right to either: (a) cancel or return at Seller's risk and expense all or any portion of the goods because of such non-conformity, defects (latent or patent), or any other breach of warranty; or (b) make any claim for damages, including manufacturing costs, damage to the goods caused by improper boxing, crating or packing, and/or loss of profits or other special damages incurred by Buyer. Further, acceptance of any of the goods and/or services shall not bind Buyer to accept future shipments, nor deprive it of the right to return goods and/or services already accepted. Seller shall inspect all goods prior to shipment.

#### **E. WARRANTIES, SERVICE & REPLACEMENT PARTS, & REMEDIES**

**11. Warranties.** Seller hereby warrants that the goods and/or services furnished pursuant to this Order will: (a) be free from defects in material, workmanship and design (to the extent designed by Seller or any of its subcontractors, agents, or suppliers, even if the design has been approved by Buyer) (b) be of merchantable quality and fit and sufficient for the purposes intended by Buyer (Seller is responsible for determining Buyer's purposes and assuming the suitability of the goods and/or services to operate within those purposes and the operating environment); (c) conform with Buyer's instructions, specifications, drawings and data in accordance with Section 7 above; (d) conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of this Order; and (e) be free of all liens, claims and encumbrances whatsoever, including, without limitation claims of infringement of intellectual property. Seller agrees that these warranties will survive acceptance of the goods. Seller further warrants that all services performed for or on behalf of Buyer will be performed in a competent, workmanlike manner and will be free from faults and defects and, in the case of software or code making up any part of the services, be free from viruses, disabling code, and open source software. Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in the goods and/or services that is or may become harmful to persons or property. Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. In addition to the foregoing warranties, Seller will assign and pass through to Buyer all representations and warranties provided by manufacturers of parts or components of the goods.

The term of this warranty by Seller shall be the longer of (1) the duration of any warranty provided by Buyer in connection with Buyer's sale of

the goods and/or services, or (2) thirty-six (36) months from the date the related goods and/or services are placed into operation.

The following communications shall each constitute notice of a breach of warranty under the contract: (i) any communication specifying a defect, default, claim of defect or other problem or quality issue of the goods and/or services provided under the contract; (ii) any communication to Seller claiming that the goods and/or services are in breach of any warranty or that Seller is in default under the contract; and (iii) a termination notice from Buyer. Any such claim by Buyer of breach may only be rescinded in writing by an authorized representative of Buyer.

**12. Service and Replacement Parts.** Seller shall grant to Buyer an option during the term of such Order and for ten (10) years thereafter to purchase parts for any goods, including those which become obsolete during the term of such Order, at the lowest price selling price. Prices for such parts shall be firm for ten (10) years following the termination or obsolescence of such Order. During this period, Seller shall continue to provide technical support and service at the same level as currently required under the Order.

In the event Seller discontinues manufacture of the goods or does not provide the goods in a timely manner for Buyer's requirements, Seller shall grant to Buyer an exclusive, unlimited, perpetual, world-wide, royalty free right to all software, drawings, specifications, data, documentation and know-how which shall enable and facilitate Buyer, its suppliers, and its customers to purchase, manufacture, incorporate, use, market, sell, modify, repair and/or reconstruct such goods.

**13. Remedies.** Seller will reimburse Buyer for any damages caused by Seller's breach or by nonconforming goods and/or services, including, without limitation: i) cost incurred for replacement materials or replacement parts available via parts center, dealer or other distribution channel; ii) freight costs incurred to deliver replacement material or to expedite shipments or to return goods and/or services to Seller; iii) expenses incurred to diagnose and repair the nonconforming goods and/or service, including; labor, travel, per diem, diagnostic time, locally purchased materials and sublet services; iv) costs associated with containing and correcting a Seller-caused problem resulting in recalls, field service actions, or other large scale issues, including, without limitation; manpower spent planning, directing and coordinating containment efforts, engineering testing, jobsite product inspections, training and travel for repair crews, warranty concessions to Buyer's customers; v) costs of inspecting, sorting, storing, reworking, repairing or replacing the nonconforming goods and/or services; vi) costs resulting from production interruptions; conducting recall campaigns, customer field service actions or other corrective service actions; vii) costs resulting from personal injury (including, without limitation, death) or property damage caused by nonconforming goods and/or services; viii) actual and reasonable professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials; and ix) costs incurred as a result of goods and/or services being accused of or found to be infringing any intellectual property right (including, without limitation and in addition to intellectual property indemnity, all costs relating to obtaining suitable replacement goods and/or services). If nonconforming goods and/or services are rejected by Buyer, the quantities under any Order shall be reduced unless Buyer otherwise notifies Seller. Seller shall not replace reduced quantities without a signed document by Buyer. Buyer's damages include, without limitation, third party charges and Buyer's internal expenses (e.g. hourly wages, salaried wages and carrying costs) relating to transportation (including, without limitation, expedited freight), containment, sorting and other attempts at mitigation relating to any Seller breach, plus Buyer's reasonable attorneys' fees.

Reimbursement amounts for warranty claims will be addressed, at Buyer's option, through credits issued by Seller, debits taken by the Buyer, or cash payments from Seller to Buyer, and will be executed thirty (30) days after notification to Seller of product failure within the warranty time period.

In the case of a safety recall or a field fix program, or if Buyer voluntarily undertakes such an action related to the goods and/or services, Buyer will notify Seller of the initiation and Seller shall, at Buyer's option, either repair or replace the related goods and/or services, and reimburse Buyer for any damages.

## **F. CONFIDENTIAL INFORMATION, BUYER'S PROPERTY, & INTELLECTUAL PROPERTY**

**14. Confidential and Proprietary Information.** All information, knowledge, or data furnished or made available by Buyer to Seller or to Seller's employees or subcontractors in connection with the goods and/or services covered by this Order shall be treated as confidential (Confidential Information) and shall not be disclosed by Seller, its employees and/or contractors, subcontractors, consultants, or agents to any third party either in whole or in part, without Buyer's prior written consent, except that Seller may disclose Confidential Information to its contractors, subcontractors, consultants or agents who have a need to know and have executed confidentiality agreements with Seller. Seller shall not i) sell Buyer parts or components incorporating or containing confidential information to any third party, or ii) sell any goods and/or services produced using Confidential Information to any third party. Notwithstanding the foregoing, these Terms shall not restrict or affect Seller's rights to use or disclose information: i) which is or may hereafter be in the public domain through no fault of Seller; or ii) which Seller can show through its written documents, was known to it prior to the disclosure by Buyer; or iii) which is disclosed to Seller by a third party, with the legal right to disclose, subsequent to Buyer's disclosure; or iv) which Seller can show, through its documents, was independently developed by Seller without the use of the Confidential Information.

Seller acknowledges that a breach of this Section would result in immediate and irreparable harm to Buyer for which there is no adequate remedy at law. Buyer is entitled to injunctive and equitable relief compelling Seller to cease and desist all unauthorized use and disclosure of Confidential Information.

**15. Buyer's Property.** Unless otherwise provided in this Order or agreed to in writing by Buyer, all tooling, tools, machinery, equipment and material, etc., furnished or made available to Seller by Buyer, and any replacement thereof, are and will remain the property of Buyer. Such property, other than material, will not be modified without the written consent of Buyer. Such property will be plainly marked or otherwise adequately identified by Seller as being owned by Buyer and will be safely stored separately and apart from Seller's property. Seller will not use such property except for performance of work hereunder or as authorized in writing by Buyer. While in Seller's possession or control, such property will be kept in good condition, held at Seller's risk, and kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer, even in cases of force majeure. Proof of insurance will be made available to Buyer within five (5) days of its request. To the extent such property is not material consumed in the performance of this Order, it will be subject to inspection and removal by Buyer, and Buyer will have the right of entry to Seller's premises for such purposes without any additional liability whatsoever to Buyer. As and when directed by Buyer, Seller will disclose the location of such property, prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear excepted.



Seller agrees that special tooling will be retained and not used or reworked except for performance of work hereunder or as authorized in writing by Buyer. The term "special tooling" includes all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment, manufacturing aids, drawings and any replacements of the foregoing, acquired, manufactured or used in the performance of this Order, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the items or parts thereof or performance of the services of the type required by this Order. The term "special tooling" does not include (a) items of tooling or equipment heretofore acquired by Seller, or replacement thereof, whether or not altered or adopted for use in the performance of this Order, (b) consumable small tools, (c) general or special machine tools or similar capital items, or (d) items of tooling, title to which is in Buyer. While in Seller's possession or control, Seller shall keep the special tooling in good condition fully covered by insurance, and will replace the special tooling when lost, destroyed, or necessary for performance of work hereunder. Upon completion or termination of the work under this Order for which the special tooling is required, Seller will furnish Buyer a list of the items, parts, or services for the manufacture or performance of which such special tooling was used or designed and a list indicating where each item of the special tooling is located, and will transfer title to and possession of the special tooling to Buyer for an amount equal to the unamortized cost thereof, or dispose of the special tooling as Buyer may direct in writing. In addition, Buyer shall have the right to take possession of, including the right of entry to Seller's premises for such purpose, any special tooling, title to which Buyer acquires hereunder, without any additional liability whatsoever to Buyer.

**16. Intellectual Property.** Unless otherwise provided in a separate agreement between the parties, Seller agrees that, where it undertakes, whether alone or jointly with Buyer, any research, development and/or design activities relating to goods and/or services 1) in the course of performance of any Order and/or 2) using Confidential Information provided by Buyer, Buyer shall own all rights in any resulting intellectual property. Seller agrees to promptly disclose to Buyer such intellectual property to Buyer and hereby irrevocably transfers, conveys, and assigns all rights, title, and interest to Buyer in such intellectual property. Seller shall execute or obtain the execution of any papers as may be necessary to perfect ownership of the intellectual property in Buyer or as may be necessary in the obtainment, maintenance, or enforcement by Buyer of any patent, trademark, copyright, trade secret, or other proprietary right pertaining to the inventions or improvements. Seller shall be solely responsible for any compensation payable, by law or by contract, if any, to individual inventors of Seller. Should any pre-existing or later developed intellectual property be part of the good and/or services of Buyer, then Seller hereby grants to Buyer, its affiliates, and its directed agents a non-exclusive, royalty-free, fully paid, worldwide right and license to use and reproduce such intellectual property.

## **G. INSURANCE**

**17. Insurance.** Throughout the term of the Order, Seller shall provide, maintain, and furnish evidence of adequate insurance coverage to protect the parties from such claims, liabilities, demands, damages, or injuries arising out of or related to Seller's performance of its obligations under the Order. Seller's insurance will be primary and noncontributory to that maintained by Buyer. Such insurance shall not be subject to any self-insured retentions without the prior written consent of Buyer. All self-insured retentions and deductibles for such insurance shall be the responsibility of Seller. Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification of Buyer under Section 21. Seller's insurance coverage will not be Buyer's exclusive remedy; instead Buyer will be entitled to all remedies available to it under equity or the law.

## **H. COMPLIANCE & AUDIT**

**18. Compliance.** Seller shall be bound by, and all goods and/or services shall comply with, all applicable foreign, United States federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions, or other requirements contained in, issued under, or adopted pursuant to such laws, including, without limitation, product content and labeling, including, without limitation, the U.S. Toxic Substances Control Act, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury, anti-bribery, anti-corruption laws, Conflict Mineral prohibition and Conflict Mineral disclosure requirements, environmental laws and regulations, Executive Order 11246 and 41 CFR § 60-4.3(a); Executive Order 11701 and 41 CFR §§ 60-250.5(a), 60-300.5; Executive Order 11758 and 41 CFR § 60-741.5(a); U.S. immigration laws, including the L-1 Visa Reform Act of 2004 and the H-1B Visa Reform Act of 2004; and Executive Order 13496. Seller also agrees to adopt and comply with Buyer's Code of Conduct, which is located at <http://www.supind.com/investor/code-of-conduct.html> and may be amended by Buyer from time to time, and will take all reasonable steps to ensure that its subcontractors comply with Buyer's Code of Conduct.

**19. Audit.** Upon Buyer's request, Seller shall deliver to Buyer data, records, and other materials to certify its compliance with respect to Section 18. Additionally, Buyer has the right to conduct onsite audits of the Seller, at no cost to Buyer, including, without limitation: 1) inspecting the work in process, and/or 2) conducting compliance audits, quality control measures and tests at Seller's or its subcontractor's premises. Buyer's audit(s) and/or inspection does not constitute acceptance of any work-in-process or finished goods and/or services and does not relieve Seller of any of its responsibilities or warranties. In addition, Buyer or Buyer's designee may, at any time, review the financial condition of Seller and its affiliates, and Seller will fully cooperate in such review including promptly providing copies of or access to requested documents, and will make the appropriate financial managers or representatives available for discussions during reasonable business hours.

## **I. LIMITATION OF LIABILITY**

**20. Limitation of Liability.** IN NO EVENT WILL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES OR DIMINUTION IN VALUE, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED EVEN IF BUYER HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.

## **J. INDEMNIFICATION**

**21. Indemnification.** Seller shall defend, indemnify, and hold Buyer, its affiliated companies, respective officers, directors, employees, agents, representatives, customers, users and agents (collectively the "Indemnitees") harmless from and against all claims, suits, actions, losses, damages, claims, including without limited to, all expenses of litigation, court costs, and attorneys' fees for injury or death to any person, injury to any property, or intellectual property infringement (collectively, "Damages"), received or sustained by any person(s) or property, arising out of, occasioned by, attributable or related to i) the goods and/or services; ii) any breach of any representation or warranty made by Seller; iii) any failure by Seller to perform or fulfill its obligations under these Terms due to its acts or omissions; iv) any litigation, proceeding or claim by any third party relating in any way to the obligations of Seller; or v) any act or omission, negligent or otherwise, in its performance, whether by Seller, its subcontractors or employees. Seller further agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against the relevant Indemnitee, however, Indemnitee must consent in writing to any settlement. Such indemnification obligation will continue after the termination or expiration of any Order.

## **K. TERMINATION & FINANCIAL INSECURITY**

**22. Termination.** Buyer may terminate this Order in whole or in part for convenience by giving Seller written notice of the termination whereupon Seller will stop work on the date specified in the notice and terminate all Orders and subcontracts to the extent they relate to the terminated work. In addition, Buyer may also terminate or modify the Order, but Buyer will be responsible for payment of any goods and/or services delivered, or goods and/or services ordered prior to the date of termination but not to exceed four (4) weeks. Seller will promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding transfer and disposition of title to the possession of such work and material. Buyer's liability for any termination for convenience is limited to: i) conforming goods and/or services already delivered to Buyer as of the date of termination, and ii) payment for work in progress, limited to the costs of raw material and labor incurred for outstanding Orders as of the date of termination. In no event is Buyer responsible for payments for finished work, work in process or raw material fabricated or procured by Seller in excess of any Order. Further, in no event shall the liability of Buyer for a termination for convenience exceed the price of the related and outstanding goods and/or services under the Order in question.

Buyer shall have the right, upon thirty (30) days prior written notice to Seller, to terminate the Order in whole or in part for cause and in its sole discretion, if (i) Seller fails to make reasonable progress towards completion of the Order at the times specified, or does not make deliveries as specified in the delivery schedule; (ii) Seller has a change in ownership or management such that a competitor of Buyer gains an ownership or controlling interest in Seller; (iii) Seller breaches any of the terms of the Order, including warranties of Seller; (iv) Seller makes an arrangement, extension or assignment for the benefit of creditors; (v) Seller has a receiver appointed for the whole or any part of its assets; (vi) Seller becomes in any way the subject of a bankruptcy petition (vii) Seller dissolves or otherwise ceases to exist or liquidates all or substantially all of its assets; (viii) if Seller generally does not pay its debts as they become due; or (ix) Seller fails to remain competitive with respect to quality, technology, delivery, service, or pricing of the goods and/or services. If Seller remedies the cause giving rise to such breach within ten (10) days, then such notice of termination by Buyer shall be void.

In the event the Order is terminated for cause: i) Buyer may require Seller to transfer title and deliver to Buyer any completed or partially completed goods (including materials, part, tools, dies, jigs, fixtures, plans, drawings, information) Seller has specifically produced or acquired for the terminated portion of this Order; and/or Buyer may also acquire replacement deliverables (or parts of replacement deliverables) elsewhere on such terms or in such manner as Buyer may deem appropriate, and Seller shall be liable for any excess cost or other expenses incurred by Buyer. The rights and remedies of Buyer set forth above are in addition to, and not in lieu of, any other remedies which Buyer may have in law or equity or pursuant to other Sections of this Order.

**23. Financial Insecurity.** Buyer or a third party designated by Buyer may at any time review the financial condition of Seller and its affiliates, and Seller will fully cooperate in such review and will promptly provide copies of or access to requested documents, including without limitation financial records and statements, forecasts, business plans, banking contacts and loan documents, and will make its financial managers available for discussions during reasonable business hours. Buyer and any designated third party will keep confidential any nonpublic information about Seller obtained in a financial review and use such information only for purposes of the review, except as needed to enforce the Order. The Order may be terminated immediately by Buyer without liability to Seller if any of the following or comparable events occur, and Seller will reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including without limitation attorneys' and other professional fees: (i) Seller becomes insolvent; (ii) Seller files a voluntary petition in bankruptcy; (iii) an involuntary petition in bankruptcy is filed against Seller; (iv) a receiver or trustee is appointed for Seller; (v) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Order; (vi) Seller executes an assignment for the benefit of creditors; (vii) Seller fails to meet the credit underwriting standards of Buyer's credit insurance program, or (viii) Seller is unable to promptly provide Buyer with adequate reasonable assurance of Seller's financial capability to perform any of Seller's obligations under the Order in a timely manner. In the event that this Order is not terminated in accordance with and upon the occurrence of an event as set forth in this Section, Buyer may make equitable adjustments in the price, payment terms, and/or delivery requirements under this Order as Buyer deems appropriate to address the change in Seller's circumstances, including Seller's continuing ability to perform its obligations regarding warranty, nonconforming goods and/or services or other requirements under this Order. Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to; designate one or more representatives to be present in Seller's applicable facility to observe Seller's operations. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under this Order, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller's premises and machinery, equipment, and other property necessary for the production of the goods covered by this Order. Notwithstanding anything contained in this Section to the contrary, financial information provided by Seller to Buyer hereunder may be provided to the customer if Seller fails to provide Buyer with adequate reasonable assurance of Seller's financial capability to perform any of Seller's obligations under the Order on a timely basis.

## L. MISCELLANEOUS

- 24. Relationship of Parties.** Seller, and anyone engaged by Seller to perform its obligations hereunder, and Buyer are independent contracting parties and nothing in this Order shall make either party the agent, employee, or legal representative of the other, nor does this Order grant either party any authority to assume or create any obligation on behalf of, or in the name of, the other party.
- 25. Publicity.** Seller shall not use Buyer's name, logo, trademark, or other proprietary description unless at the direction of Buyer or upon prior written consent by Buyer.
- 26. Notices.** Any notices or other communications under any Order shall be in writing, addressed to the intended party, and may be delivered in person, or may be sent by courier, express mail, e-mail, or postage prepaid certified or registered mail at the addresses set forth in such Order. Either party may change its address by sending a change of address notice using this notice procedure. In the absence of a record of delivery, notice shall be presumed to have been delivered on the fourth business day after it was deposited, and e-mail notices require tangible confirmation of receipt from the recipient.
- 27. Assignment.** Buyer may assign the Order or any of its rights or obligations without Seller's consent. Seller may not assign its rights or delegate its obligations under any Order without the prior written consent of Buyer. Any such assignment shall not relieve Seller of its obligations and liabilities under any Order.
- 28. Caption.** The description headings of the sections herein are for convenience only and, and do not affect the construction or interpretation of these Terms.
- 29. Waiver.** The failure of either party at any time to insist or require performance by the other party of any term or provision shall not be construed as a waiver of the right to require future performance, nor will such waiver by either party of a breach of contract constitute a waiver of a later breach of contract.
- 30. Amendment.** No waiver, change, modification, or amendment to the Order shall be binding unless it is contained in writing and signed by both parties.
- 31. Counterpart.** An Order may be executed in two or more counterparts each of which will be considered an original but all of which together will constitute one agreement. An electronic copy hereof shall suffice as an original.
- 32. Severability.** If any term is invalid, illegal, or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the unaffected terms of the Order will remain in full force and effect.
- 33. Conflict.** In the event of a conflict in the Order and these Terms, the Terms shall be given precedence.
- 34. Time for Bringing Claims.** Any claim by Seller arising from or in connection with any Order cannot be filed or commenced unless filed within twelve (12) months after the alleged breach or other event giving rise to Seller's claim without regard to the date the breach is discovered. Any action not brought within such time period shall be barred, without regard to any other limitations period set forth by law or statute.
- 35. Governing Law and Venue: U.S. and Non-U.S. Transactions.** Any goods and/or services shipped from Seller's location in the United States of America or its territories (as shown by the shipping address of Seller) or delivered to Buyer's location in the United States of America or its territories (as shown by the ship to or receiving address of Buyer) shall be construed according to the laws of the United States of America and the State of Michigan, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions. Each party agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, such Order will lie in the courts for the State of Michigan, and each party specifically waives any and all objections to such jurisdiction and venue.
- For cases that fall outside of the United States of America, such Order is to be construed in accordance with the laws of the country (and state or province, if applicable) where Buyer's receiving facility is located, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any choice of law provisions. Seller agrees that any legal or equitable action or proceeding by Buyer against Seller arising out of, or in connection with, any Order may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in any court(s) having jurisdiction over Buyer's receiving facility. Any action against Buyer arising out of, or in connection with, any Order may be brought by Seller only in the court(s) having jurisdiction over Buyer's receiving facility.
- 36. Survival.** Those provisions what by their nature should survive termination of these Terms, including but not limited to Warranty, Remedies, Confidential Information, Intellectual Property, Indemnification, and Spare and Replacement Parts, shall survive any termination.
- 37. Complete Contract.** These Terms and any Order attached hereto or incorporating these Terms by reference constitutes the full and complete agreement between the parties and supersedes any and all prior or contemporaneous proposals, negotiations, understandings, representations, courses of conduct, and or agreements between the parties, excluding non-disclosure/confidentiality, bailment or development agreements previously entered into by the parties.