

# TERMS AND CONDITIONS OF PURCHASE

## 1 Relationship.

1.1 The Material/Services. Subject exclusively to the terms and conditions of these Terms and Conditions of Purchase (the "T&C") and the purchase order (the "Purchase Order") of Universal Tool Equipment and Controls, Inc. ("Buyer"), the seller ("Seller") of the goods, services, or material/service identified in the Purchase Order ("the Material/Service") agrees to provide such Materials/Services to Buyer.

1.2 Acceptance of the Agreement. The T&C, together with the Purchase Order, shall be deemed an offer by Buyer. Seller accepts the T&C and Purchase Order upon either its written acceptance or upon commencement of any required work or service, under the Purchase Order (the "Agreement"). Seller's acceptance and the Agreement shall be limited to the express written terms stated on the Purchase Order and in this T&C. Any new or additional terms contained in Seller's acceptance documents, or otherwise proposed by Seller, shall be considered nonconforming terms and are unacceptable and expressly rejected by Buyer and shall not become a part of the Agreement. Seller acknowledges that: (i) a request for quotation or similar document issued by Buyer is not an offer by Buyer; and (ii) any response by Seller to a request for quotation or similar document issued by Buyer is not an offer by Seller. The Agreement may be modified or amended only as specified in the T&C.

## 2 Quality.

2.1 Qualification Audit. Prior to start of business with Buyer, if requested by Buyer, Seller shall participate in a Qualification Audit ("Audit"). The Audit shall include an on-site review of Seller's facilities by member(s) of Buyer's organization. If there is a determination that an unsatisfactory condition exists with respect to any matter covered by the Audit, then Seller shall receive written notice of the condition and, shall provide Buyer with a written corrective action plan reasonably satisfactory to Buyer. The parties agree that if Seller fails to timely provide or implement an acceptable corrective action plan to the reasonable satisfaction of Buyer, then Buyer may rescind or terminate the Agreement for cause.

### 2.2 Compliance to Quality Procedures.

2.2.1 Seller shall comply with any and all guidelines for supply provided by Buyer (the "Guidelines"), all documents referenced in any such Guidelines, and additional requirements upon which both parties mutually agree in writing. Seller acknowledges and understands that the Guidelines may be periodically updated, revised and amended and that it is Seller's obligation to comply with the Guidelines at all times.

2.2.2 Seller must ensure that its quality assurance system is registered to ISO 9001, as modified from time to

time, or similar standards applicable to the Material/Services as specified by Buyer. Seller acknowledges that Buyer is ISO 9001 registered and agrees to take actions reasonably requested by Buyer to assist Buyer in maintaining its registration.

2.3 Verification. The Buyer's customer or customer's representative, in either case, if any, shall be afforded the right to verify at the Seller's premises and the Buyer's premises that Material, product and process conforms to specified requirements.

2.4 Inspection and Rejection. Buyer shall have the right to inspect any Material after delivery and before acceptance and reject any Material which do not conform with the Purchase Specifications (as defined in Section 3.1). If Material is rejected, the quantities will automatically be reduced unless Buyer otherwise notifies Seller. Seller shall not replace Material rejected by Buyer as non-conforming unless directed by Buyer to do so. Non-conforming Material will be held by Buyer for disposition in accordance with Seller's instructions, and at Seller's cost, within three (3) days after notification of rejection, or such shorter period as may be commercially reasonable under the circumstances. If Seller fails to provide timely disposition instructions, Buyer may, at its option, charge Seller for storage and handling or dispose of such Material without liability. Payment for non-conforming Material shall not constitute an acceptance, or impair, limit or otherwise restrict Buyer's right to claim any legal or equitable remedy, nor shall it relieve Seller of any responsibility or liability for defects or breach of warranty that are discovered after delivery, payment or acceptance.

2.5 Corrective Action. In the case of any defective or damaged Material, including but not limited to non-compliance with Seller's quality procedure requirements as set forth in this Section 2, Seller agrees (i) to initiate any required corrective action within 24 hours from the date that Buyer requests such action, (ii) to provide Buyer with a written corrective action report explaining the cause of the defect or damage within 5 business days of such date, and (iii) to provide Buyer with a written report identifying the short and long term action being taken by Seller to prevent or avoid similar defects or damage in the future within 15 working days of such date.

## 3 Specifications, Confidential Information, Intellectual Property.

3.1 Confidential Information. The following shall be considered Confidential Information of Buyer: (i) any written specifications for the Material/Service and processing of the Material/Service covered under the Agreement which Buyer has or provides to Seller with regard to the Material/Services covered under the Agreement ("Purchase Specifications"); (ii) any other business or technical information, including without limitation, all oral or written information relating to the Material/Services, or information relating to Buyer's customers, suppliers, business practices,

products, designs, inventions, or research and development; and (iii) the terms and conditions of the T&C. "Confidential Information" shall not include any information that Seller can establish by written documentation was (i) in the public domain at the time of disclosure or thereafter through no fault of Seller, (ii) independently developed by Seller, or (iii) obtained by Seller without restriction from a third party. Seller agrees to safeguard the Confidential Information by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims with respect to any technical information which Buyer shall have disclosed or may hereafter disclose to Seller in connection with the Material/Services. Seller acknowledges that the Buyer's business is extremely competitive, and promises to closely safeguard all Confidential Information.

3.2 Buyer Intellectual Property. Buyer remains the owner of Confidential Information and any drawings, models, patterns, tools, dies, jigs, specifications or other documents (collectively "Intellectual Property") that Buyer provides to Seller. Without Buyer's written consent, such Intellectual Property may not be used for the Seller's own purposes or for any other purpose or made available to third parties and may be used only for the purpose of the delivery of Material/Services to Buyer. Buyer may request at any time that such Intellectual Property be returned. Seller shall not, without first obtaining the written consent of Buyer, in any manner publish Buyer's name or otherwise indicate that Seller has furnished or contracted Material/Services to Buyer.

### 3.3 Seller Intellectual Property.

3.3.1 Seller assigns to Buyer all right, title and interest in and to all inventions, trademarks, copyrights and other proprietary rights in any Material/Service paid for by Buyer or created by Seller while performing under or supplying against this Agreement.

3.3.2 All deliverables that are created in the course of performing any Purchase Order (separately or as part of any Material/Service), and all intellectual property rights in such deliverables and Material/Service, are and shall be owned by Buyer and not by Seller. Seller agrees that all works of original authorship created by Seller in connection with the Agreement are works made for hire as the term is used under the U.S. Copyright Law. To the extent that, by operation of law, Seller would own any intellectual property rights in the deliverables or

## TERMS AND CONDITIONS OF PURCHASE

Material/Service, Seller hereby assigns to Buyer all rights, title and interest, including, without limitation, trade secret, copyrights and patent rights, in and to such deliverables and Material/Service.

3.3.3 To the extent that technical information, know how, copyrights, patents and any other intellectual property rights were not able to be assigned to Buyer under Sections 3.3.1 and 3.3.2 (by operation of law or otherwise), Seller grants to Buyer a perpetual, irrevocable, non-exclusive, worldwide license with the right to grant sublicenses to use any such technical information, know how, copyrights, patents and other intellectual property rights owned or controlled by Seller to make, have made, use and sell any Material/Service provided by Seller under this Agreement. The license shall be effective from the first delivery of Material/Service under the Agreement.

3.3.4 Seller shall ensure that any subcontractors to Seller shall have contracts with Seller in writing consistent with the terms of this Section 3 to ensure that the protections required by Buyer from Seller are also received from subcontractors for the benefit of Buyer.

3.4 Production Rights. Buyer does not grant or convey to Seller and Buyer reserves all rights to use tooling, drawings, designs, patterns or Material/Services or other information belonging to Buyer or supplied by or on behalf of Buyer.

3.5 Customer Relationships. Seller agrees that it will not solicit any business from any customer of Buyer unless otherwise approved in writing by Buyer. Seller agrees that during the course of the Agreement, it will have no communication with Buyer's customers that is in any way damaging to Buyer, and further agrees that it will immediately report to Buyer any communication that Seller's representatives have with any of Buyer's customers relating in any way to Buyer.

### 4 Delivery

4.1 Delivery Date. The delivery date shall be the date designated by Buyer in written material releases or other writing. The parties agree that in the event that Seller fails to deliver any order/release for Material on the delivery date, Buyer, in addition to other rights or remedies it may have, shall be entitled, at its option, to cancel the order/release for the Material which was not timely delivered without any obligation or liability to Seller and to purchase such Material from a third party.

4.2 Performance Obligation. As time is of the essence, Seller shall deliver all orders for Material/Service 100% "on time." The term "on time" shall mean on, or prior to, the specified delivery date.

4.3 Corrective Action. Should at any time Seller fail to deliver required Material/Services per the delivery date, Seller shall incur all costs of expedited delivery and any other reasonable and verifiable cost that may be made necessary to make such a delivery to Buyer and Buyer's customer.

### 5 Shipment and Payment Terms

5.1 Premium Charges. Seller shall be responsible for any premium freight charges required in order for Seller to deliver an order by the applicable delivery date or remedy a past due situation that was the responsibility of Seller.

5.2 Invoices. Unless instructed otherwise by Buyer, Seller shall invoice Buyer upon shipment of an order. Invoices and packing lists must be sent to locations identified by Buyer. For shipments that will cross national borders (exports) the required documentation must be provided to parties identified by the Buyer no later than the time of shipment.

### 6 Warranty

6.1 Warranty. The Seller warrants that the Material:

- 6.1.1 will conform to the Purchase Specifications;
- 6.1.2 will be (i) of merchantable quality and fit sufficient for the particular purposes intended, (ii) new, (iii) comprised of best available technology, (iv) safe, (v) of first-class material/services and workmanship and (vi) free from defects, contamination and rust;
- 6.1.3 will be packaged and marked correctly;
- 6.1.4 if designed by Seller, free from defects in design;
- 6.1.5 will comply with all Laws;
- 6.1.6 will not infringe any patents, copyrights or other proprietary rights of Seller or others; and
- 6.1.7 will be free from all liens and encumbrances.

6.2 Warranty Period. All warranties of Seller extend to future performance of the Material/Services and are not modified, waived or discharged by delivery, inspection, tests, acceptance and payment. Buyer's approval of any design, drawing, material/service, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach.

6.3 Non-conformity. In addition to the rights set forth in Section 2.2, in the event that Buyer

determines that any Material is defective, damaged or otherwise not in conformity, Buyer may reject the Material and in such case, Buyer shall not be obligated for payment of the purchase price and may cancel the order/release without obligation or liability. Should Seller not make whole on promised Material, or goods and services or, if Buyer has already paid for the Material/Service in question, Seller shall, at Buyer's option, either: (i) replace or reprocess the Material/Service, or (ii) reimburse Buyer for the purchase price of the Material/Service. In either case, in addition to all other damages that Buyer is entitled to under the law, Seller shall pay for incidental and verifiable costs including but not limited to, Buyer's cost of repackaging, manufacturing and transporting the defective Material and/or replacement Material to and from Buyer's or Buyer's customer's facility.

6.4 Damages. The Seller is liable for all direct, incidental and consequential damages, losses, costs, and expenses incurred by the Buyer resulting from Seller's failure to deliver conforming and non-defective Material or to comply with the shipping and delivery or other requirements of the Buyer, even if the Seller has cured the failure. This includes but is not limited to compensating Buyer for:

- 6.4.1 any amounts charged by customer(s) to Buyer;
- 6.4.2 all costs of containment, sorting, repair, replacement, cure, cover, or any other costs incurred by Buyer, as reasonably determined by Buyer;
- 6.4.3 all costs of any recall campaign, corrective service action, or other voluntary or involuntary action in which Buyer or any customer participates related to the Material.

### 7 Insurance

Without limiting Seller's liability, Seller and its subcontractors agree to furnish certificates from their insurance carriers showing that they carry Worker's Compensation, Commercial General Liability, including Products Liability (at a minimum of \$5,000,000 per occurrence), Completed Operations and Contractual Liability, "All Risks" Property (including, but not limited to, coverage for tooling and material/service maintained by Seller and owned by Buyer), and Comprehensive Automobile insurance coverage within 10 days of Buyer's written request. Certificates must show the amount of coverage, number of policy, and date of expiration, and in respect to Product Liability coverage, must name Buyer as an additional named insured. Seller may not terminate or modify insurance coverage without informing Buyer in advance and showing new equivalent coverage.

### 8 Bailed Property

8.1 Property Damage. Seller bears all responsibility for loss of and damage to any property owned by Buyer and in Seller's possession or control for use in performing under the Agreement,

## TERMS AND CONDITIONS OF PURCHASE

including responsibility for loss and damage which occur despite Seller's exercise of reasonable care. Seller will: (i) Properly house and maintain such property on Seller's premises; (ii) Prominently mark it "property of" Buyer or similar; (iii) Adequately insure such property against loss or damage; and (iv) Refrain from commingling it with the property of Seller or with that of a third party.

**8.2 Liens.** Seller affirmatively waives any lien, whether based in statute or common law, that Seller might otherwise have on any Material/Services or Buyer's property for work done thereon or otherwise. Seller will assign to Buyer any claims against third parties with respect to Buyer's property. Upon request, Seller will immediately deliver such property at Buyer's option F.O.B. Buyer's premises properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of the property from Seller's premises. Seller's cooperation with delivery and removal of Buyer's property is not contingent on final payment unless final payment is both undisputed and overdue.

### 9 Indemnification and Products Liability

**9.1 General.** Seller shall indemnify and hold Buyer and Buyer's customers harmless from and against any and all claims, damages, recall and other costs, liabilities and expenses (including without limitation, reasonable attorneys' fees) incurred by reason of any breach of warranty or other obligation of Seller under the Agreement or other defect or unsafe condition with respect to any Material/Service. If Seller is obligated to indemnify under this Section, then Buyer may at its option participate in the defense of any claim with its own counsel, at Seller's expense.

**9.2 Infringement.** Seller shall defend, indemnify and hold Buyer and Buyer's customers harmless against any and all liabilities, damages or expenses (including reasonable attorney fees) which may be incurred in connection with any suit, claim, judgment or demand asserting that any Material/Service purchased by Buyer infringes upon any patent or other intellectual property rights, whether such infringement is caused by the manufacture, purchase, use or disposition of the Material/Service along or in combination with use of the Material/Service with other products except to the extent that such infringement or alleged infringement arises from a design furnished completely by Buyer. Tolerance modifications to Seller's design shall be considered Seller's design for purposes of the Agreement. Buyer shall notify Seller promptly upon receipt of any written claim or notice of any infringement of third party intellectual property rights in connection with the Material/Services. Seller shall immediately take all steps to prevent or settle such dispute on its own authority and shall hold Buyer harmless against all effects whatsoever in respect thereof. Buyer may retain counsel of its choice at its expense to participate in any suit, claim, or proceeding. Seller shall have the right to settle or compromise any suit, claim or proceeding at its discretion, provided that the terms of the settlement or compromise provide

for the unconditional release of Buyer, and the settlement or compromise requires the payment of monetary damages only. Seller shall not settle, without Buyer's prior written consent, any suit, claim or proceeding which imposes upon Buyer any obligation, or in any way prejudices the rights of Buyer, other than as set forth herein. Any other settlement or compromise requires prior written approval from Buyer

### 10 Term and Termination

**10.1 Term.** The Agreement shall commence upon acceptance under Section 1.2. Subject to Buyer's termination rights, the Agreement is binding on the parties.

**10.2 Termination by Buyer.** In addition to any other termination right which Buyer has, it may terminate the Agreement, T&C, or any Purchase Order:

**10.2.1** for convenience on ten days advanced written notice, except that advance notice is not required if Buyer's customer terminates its order with Buyer for any reason, or if Buyer exits the business and/or closes a plant which is the recipient of the Material/Service; or

**10.2.2** for breach by Seller, including if: a) Seller repudiates or defaults on any Material/Service term, including Seller's warranty or b) Seller fails to perform services or deliver goods or Material/Service as specified by Buyer or fails to make progress so as to endanger timely and proper completion of services or delivery of goods or Material/Service. Seller's default shall constitute a breach if, after receipt of notice from Buyer specifying the nature of the default, it does not correct such default to Buyer's satisfaction within 10 days, or such shorter period of time that is commercially reasonable under the circumstances. Declaring a default or breach under this section shall be in addition to any other remedy available to Buyer and shall not relieve Seller of its obligations under the Agreement or imposed by law.

**10.3 Termination by Seller.** Seller may terminate the Agreement only for non-payment of the purchase price for Material/Services which are thirty or more days past due, and then only if: (i) Seller first provides Buyer written notice specifying the amounts past due and Seller's intent to terminate if the past due amount is not paid; and (ii) Buyer, within 60 days of such notice, does not either: (x) pay the past due amounts; or (y) notify Seller that the amount claimed to be unpaid are disputed by Buyer. Seller shall terminate under this Section by delivering a Termination Notice to Buyer. Seller may not terminate or cancel for any reason except as

permitted under this Section. Seller may not suspend performance for any reason.

**10.4 Obligations on Termination.** In the event of any termination under this Section, unless otherwise agreed by Buyer and Seller, Buyer shall pay to Seller the following amounts, without duplication: a) the Agreement price for all goods, services or Material/Service that have been completed and delivered in conformance with the Agreement and not previously paid for, and b) the actual and reasonable costs of work-in-process and raw material/services incurred by Seller, less, the sum of the reasonable value or costs (whichever is higher) of any goods or material/services used or sold by Seller with Buyer's written consent. Notwithstanding the foregoing, Buyer will make no payment for finished goods, work-in-process or raw material/services fabricated or procured by Seller in amounts in excess of those authorized or necessary to meet the then existing delivery schedules nor for any undelivered goods that are in Seller's standard stock or that are readily marketable. Buyer's maximum liability for payments pursuant to this paragraph shall not exceed the total of all required payments under the T&C minus those actually made. In no event shall Buyer be liable for "damages" incurred by Seller on termination, including, but not limited to payments owed to Seller's subcontractors or for loss of anticipated profits, unabsorbed overhead, interest, product development or engineering costs, facilities and equipment costs or rental, unrecovered depreciation costs, or general and administrative burden charges. Seller shall submit its claim for payments under this paragraph, with supporting documentation, within 60 days of the effective termination date. Buyer shall have the right to audit the relevant books and records, facilities, work, material/service, Material/Service, inventories and other items relating to Seller's claim.

### 11 Remedies

**11.1** The rights and remedies reserved to Buyer will be cumulative with and in addition to all other legal or equitable remedies.

**11.2** In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Material/Services or transition support, or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations (including related temporary and preliminary injunctive relief).

**11.3** Seller shall reimburse Buyer for all actual attorney's fees (including the cost of in-house counsel) in any action arising out of this Agreement, unless Seller is the prevailing party

### 12 Other Provisions

**12.1 Compliance with Laws.** Seller and its subcontractors shall comply with all applicable laws, regulations, directives, guidelines, rules, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation,



## TERMS AND CONDITIONS OF PURCHASE

importation, exportation, licensing, approval or certification of the Material/Service, including, but not limited to, those relating to environmental matters, data protection and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety (collectively, "Laws"). Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive worker treatment or corrupt business practices in the supply of Material/Service under the Agreement. At Buyer's request, Seller shall certify in writing its and its subcontractors compliance with the foregoing. Seller shall indemnify and hold the Buyer harmless from and against any liability claims, demands or expenses (including actual attorney's or other professional fees) arising from or relating to Seller or Seller's subcontractor's non-compliance with this Section. Seller shall comply with all applicable laws and regulations, including but not limited to conflict mineral standards, the Fair Labor Standards Act and Occupational Safety and Health Act of 1970. Where this Agreement covers Material/Services to be used in the fulfillment of a government contract, Seller shall comply with Executive Order 11246, the Vocational Rehabilitation act of 1973, the Vietnam Era Veteran's Readjustment Act of 1974, the National Women's Business Enterprises Program established by Executive Order 12138, the Labor Surplus Area Program mandated by P.L. 95-89, Small Business Concerns and Small Disadvantaged Business Concerns Programs established by P.O. 95-507, and all rules and regulations thereunder, unless exempt from such compliance. Seller shall hold Buyer harmless from and reimburse it for any and all costs, damages, and expenses (including actual attorney's fees) suffered by it directly or indirectly through the failure of Seller to comply with any such laws, regulations, or orders. Seller must supply a Material/Service Safety Data Sheet (MSDS) that complies with OSHA 29 CFR 1910.1200 to Buyer, to be on file at Buyer's facility, including the DOT Hazard Class UN, NFPA Rating numbers, and EPA Reportable Quantity, and technical data sheets on usage of material/service.

**12.2 Notice.** Whenever written notice is required or permitted to be given hereunder, it shall be deemed given on the date the same is delivered, personally or by Federal Express or comparable commercial service, or sent by facsimile or email with confirmation, or three (3) working days after the mailing thereof, to the party to whom the notice is to be given at its last known address

**12.3 Directed Seller.** If Buyer's customer directed, recommended, requested, suggested or otherwise identified Seller as a source of the Material/Services: (a) Buyer will pay Seller for the Material/Services only following and to the extent of Buyer's actual receipt of payment from that customer for those goods in which the specific Material/Services are incorporated; (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the customer, Seller will notify Buyer in writing and will immediately adjust its invoices to reflect any price reduction,

provided that no change will be binding on Buyer without Buyer's specific written consent.

**12.4 No Agency.** Nothing in the T&C shall constitute or be deemed to constitute an agency relationship between the parties. No party hereto is authorized or empowered to act as an agent for the other.

**12.5 Force Majeure.** Except as set forth herein, neither party shall be liable for failure to perform or delay in performance hereunder if such failure or delay is due to fire, storm, flood, war, embargo, or any act of God or other cause or contingency beyond such party's reasonable control; provided that, if any act or event described in this Section prevents or will prevent Seller from performing its obligations under the Agreement, Buyer shall have the right, without obligation or liability to Seller, to purchase Material/Service from another supplier until Seller is able to resume performance of its obligations hereunder. Under such circumstances Seller shall reimburse Buyer for any premium reasonably and verifiably paid by Buyer for such Material/Service.

**12.6 No Assignment.** Seller may not assign its rights or obligations under the Agreement to any other party without the prior written consent of Buyer.

**12.7 Governing Law; Arbitration; Jurisdiction.** The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and any conflict-of-laws provisions that would require application of another choice of law, are excluded. Any action hereunder shall be subject to the exclusive jurisdiction of state and federal courts sitting in Michigan. The arbitration provisions of this Section will be governed by the United States Federal Arbitration Act. At Buyer's option, exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Material/Service, the Purchase Order, the Agreement, the validity of the Order, Agreement or any of the terms of the T&C, or any other matter between the parties (other than requests for equitable or injunctive relief or specific performance) will be resolved by binding arbitration, conducted in the English language using a single arbitrator. The arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the U.S. Federal Rules of Civil Procedure, in a location agreed by the parties. If the parties cannot agree on a location within 30 days of Buyer's written request for arbitration, the arbitration will be conducted in the metropolitan area of Detroit, Michigan, USA and the arbitrator will be selected from an AAA list using the AAA-recommended selection method. The arbitrator will issue written findings of fact and conclusions of law. Each party will bear equally the costs and expenses of AAA and of the arbitrator, and each party will bear its own costs and expenses – provided, however, (1) that the failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration, and (2) that the arbitrator may award attorneys' fees and costs to the substantially prevailing party. In no

event will any party be awarded punitive or exemplary damages or any other damages not measured by the prevailing party's actual damages. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. The award of the arbitrator will be enforceable in any court of competent jurisdiction, provided that either party may appeal to an appropriate court for correction of any clear error of fact or law by the arbitrator (provided that the appealing party must first post an appropriate bond and that the prevailing party in any such action will be entitled to its attorneys' fees and costs). In all other cases, including any request for equitable or injunctive relief, the parties agree and consent to the exclusive jurisdiction of the Special Business Docket of the Macomb County Circuit Court, Michigan or the U.S. District Court for the Eastern District of Michigan, Southern Division as applicable, provided that Buyer may elect to bring an action against Seller in any court having jurisdiction over Seller.

**12.8 Survival.** The provisions of all sections contained in the T&C which are by their nature intended to survive the termination of the Agreement shall so survive the termination of the Agreement for any reason. The termination of the Agreement shall not affect in any manner the rights and obligations of the parties accruing prior to the date of such termination nor any rights or remedies existing at law or in equity by reason of any breach of any term of the Agreement which occurred prior to such termination.

**12.9 No Waiver.** NO WAIVER OF ANY BREACH OF ANY PROVISION OF THESE TERMS WILL CONSTITUTE A WAIVER OF ANY OTHER BREACH OR OF SUCH PROVISION. THESE TERMS MAY BE MODIFIED ONLY IN WRITING SIGNED BY AUTHORIZED REPRESENTATIVES OF BUYER AND SELLER. HOWEVER, BUYER MAY, AT ANY TIME, BY WRITTEN CHANGE ORDER, MAKE CHANGES IN (A) QUANTITIES ORDERED, (B) THE DRAWINGS, DESIGNS OR SPECIFICATIONS APPLICABLE TO THE GOODS OR SERVICES COVERED BY THIS ORDER, (C) THE METHOD OF SHIPMENT AND PACKING, AND/OR (D) THE PLACE OF DELIVERY. IF SUCH CHANGES MATERIALLY AFFECT THE TIME FOR PERFORMANCE, THE COST OF MANUFACTURING THE MATERIALS, OR THE COST OF FURNISHING SERVICES, BUYER WILL MAKE AN EQUITABLE ADJUSTMENT IN THE PURCHASE PRICE OR THE DELIVERY SCHEDULE OR BOTH. ANY DISPUTE WITH RESPECT TO AN EQUITABLE ADJUSTMENT SHALL NOT RELIEVE SELLER OF ITS OBLIGATION TO PERFORM IN ACCORDANCE WITH A WRITTEN CHANGE ORDER.

**12.10 Entire Agreement.** The T&C and Purchase Order is intended as a final expression and a complete and exclusive statement of the Agreement between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and

## TERMS AND CONDITIONS OF PURCHASE

understandings of the parties. No amendment to or modification of the Agreement shall be valid or binding upon either party unless it is made in writing and signed by a duly authorized representative of both parties unless otherwise required by law.

**12.11 Severability.** In the event that any provision of the Agreement is held illegal or invalid for any reason, such illegality or invalidity shall at the option of the party against whom the same is asserted not affect the remaining parts of the Agreement but the Agreement shall be construed and enforced as if that illegal and invalid provision had never been inserted herein.

**12.12 No License.** Nothing in the Agreement will be construed as granting any right or license to the Seller, either express or implied, to any intellectual property right of the Buyer or any right to use Buyer's Confidential Information except for the purposes of the Agreement. Upon expiration or termination of the Agreement, Seller shall immediately cease all use of Buyer's Intellectual Property and Confidential Information. All copies of Buyer's Confidential Information shall be immediately returned to Seller or destroyed at Buyer's discretion.

**12.13 Trade Remedy Proceedings.** Seller understands that the Material/Services it produces may be, either now or in the future, subject to one or more trade remedy proceedings (e.g., anti-dumping, countervailing duty, safeguard) in the United States or another country, which may result in the imposition of additional duties or other charges on the Material/Services. If such proceedings are initiated, Seller agrees that, at Buyer's request, it will cooperate fully with Buyer and with requests for information from the competent government authorities in the importing country. Seller further understands and agrees that such cooperation may require it to provide confidential sales and cost information to the competent authorities so that they can calculate the amount of the duty or other charge on the Material/Services.

At all times before, during, or after the initiation of a trade remedy proceeding in the United States or another country, Seller agrees to take all available steps necessary to minimize the risk that additional duties or other charges may be imposed on the Material/Services sold to Buyer. Seller also provides Buyer with a warranty of non-applicability of any future additional duties or other charges (e.g., anti-dumping duties) covering the Material/Services sold to Buyer, so long as the Material/Services are: (1) sold before the date of publication of the official government notice that establishes the authority of the competent authorities to impose additional duties or other charges (i.e., the "order"); and (2) exported before the date of publication of the official government notice concluding the investigation phase of the trade remedy proceeding. The purpose of this provision is to comply with U.S. regulation 19 C.F.R. 351.402(f) (2006). Buyer retains the right to terminate the Agreement if additional duties or other charges are imposed on the Material/Services produced by Seller.

### 13 Import Laws

For Seller's Material/Services to be imported into the United States, Seller shall comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customer-Trade Partnership Against Terrorism ("C-TPAT") initiative (for information go to <http://www.cbp.gov/> and find the link to the C-TPAT section). At the Buyer's or the Bureau of Customs and Border Protection's request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold the Buyer harmless from and against any liability, claims, demands or expenses (including actual attorney's or other professional fees) arising from or relating to Seller's noncompliance.

### 14 Trademark and Marks

**14.1 Trademark Protection.** Buyer may require Seller to place Buyer's trademarks (MARKS) on the Material/Service. If Buyer makes such a request, Buyer grants to Seller a limited, revocable, nonexclusive royalty free license for the term of the Agreement to use the MARKS on products, Material/Services and packaging Material/Services in connection with the sale of Material/Service to Buyer only. This license grant is limited to sales made to Buyer or at the direction of Buyer. The license granted in the Agreement is limited to Material/Service manufactured and/or produced by Seller at the direction of and for Buyer, or Buyer's authorized subsidiaries or affiliates. Seller is not authorized to use the MARKS in connection with the sales, manufacturing or distribution of any products or services unless expressly authorized by Buyer in writing. Upon expiration or termination of the Agreement for any reason, Seller will immediately refrain from further use of the MARKS or any further reference to them, direct or indirect, or anything deemed by Buyer to be similar to the MARKS in connection with the manufacture, sale or distribution of any of Seller's products.

#### 14.2 Ownership of Marks

**14.2.1** Seller recognizes there is significant value and good will associated with the MARKS, and acknowledges that the MARKS and all rights and good will associated with the MARKS belong exclusively to Buyer.

**14.2.2** Seller's every use of the MARKS shall inure to the benefit of Buyer and Seller shall not at any time acquire any rights in the MARKS by virtue of any use it may make with of the MARKS.

**14.2.3** Seller shall cooperate fully and in good faith with Buyer for the purpose of securing and preserving Buyer's rights to the MARKS.

**14.2.4** Upon the termination or expiration of the Agreement, Seller will be deemed to have assigned, transferred, and conveyed to Buyer any rights or good will to the MARKS that may have been obtained by Seller. Seller shall cooperate with and

do all acts necessary so that Buyer can accomplish or confirm the foregoing. Any such assignment, transfer, or conveyance shall be without consideration other than the mutual covenants and considerations of the T&C.

**14.2.5** Seller and its parent company, subsidiaries, and divisions, if any, and its subcontractors, agents, and representatives agree not to attempt to register the MARKS on any product or service either during the term of or after termination of the Agreement.

### 15. Information External Providers

The organization shall ensure the adequacy of requirements prior to their communication to the external provider.

The processes, products, and services to be provided including the identification of relevant technical data specs, drawings, process requirements, work instructions.

The approval of products and series, methods, processed, equipment, the release of products and services.

Competence including any required qualification of persons.

The external providers interactions with the organization.

Control and monitoring of the external providers performance to be applied by the organization.

Verification or validation activities that the organization or its customer intends to perform at the external provider's premises.

Design and development control. Special requirements, critical items, or key characteristics. Test, Inspection, and verification (including production process verification).

The use of statistical techniques for product acceptance and related instructions for acceptance by the organization.

The need to implement a quality management system.

Use customer-designated or approved external providers, including process sources (e.g. special processes).

Notify the organization of nonconforming processes, products, or services and obtain approval for their deposition.

Prevent the use of counterfeit parts.

Notify the organization of changes to processes, products, or services, including changes of their external providers or location of manufactures, and obtain the organization's approval.

Flow down to external providers applicable requirements including customer requirements.

Provide test specimens for design approval, inspection/verification, investigation, or auditing.

Retain documented information, including retention periods and disposition requirements.

The right of access by the organization, their customer, and regulatory authorities to the applicable areas of facilities and to applicable documented information, at any level of the supply chain.

Ensuring that persons are aware of their contribution to product of service conformity. Their contribution to product safety. The importance of ethical behavior.