

PURCHASE ORDER TERMS AND CONDITIONS (TC1001)

- 1. Sole Agreement.** This Purchase Order (“this Order”), together with the face sheet and any other documents incorporated herein, constitutes the sole agreement between Company and the Supplier for the goods to be purchased hereunder, superseding all prior agreements and understandings, oral or written, not expressly incorporated herein. No additions to or variations from the terms herein shall be binding unless modified by a Company change order. If Supplier’s quotation is incorporated herein, it is made a part hereof only to the extent of specifying the nature and description of the goods ordered, and then only to the extent such terms are consistent with the other terms herein. AN ATTEMPTED ACKNOWLEDGMENT OF THE ORDER CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS OF THIS ORDER IS NOT BINDING UPON BUYER UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING, AND BUYER HEREBY OBJECTS THERETO.
- 2. Prices.** All prices are firm unless otherwise agreed in writing.
- 3. Extra Charges.** No charges of any kind, including, but not limited to charges for boxing, packing, loading, bracing or cartage will be allowed unless specifically agreed to by Company on the face of this Order.
- 4. Transportation.** Transportation requirements will be set forth on the face of this Order
- 5. Authorized Representative.** Company’s Buyer is the only representative of Company authorized to act in matters relating to this Order.
- 6. Non-Assignment.** Any assignment by Supplier of its rights (other than an assignment of the right to receive payment hereunder) under this Order in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of Company shall be void.
- 7. Force Majeure.** Timely delivery in accordance with the schedule is of the essence of this agreement. Providing the conditions of this Paragraph are satisfied, Supplier shall not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition which is beyond Supplier’s reasonable control without Supplier’s fault or negligence. Acts of God, acts of civil or military authorities, Governmental priorities, fires, strikes, floods, epidemics, war or riot and other similar causes, whether of a similar or dissimilar nature, are examples of excusable delays. Within seven (7) days of the commencement of any excusable delay Supplier must notify Company in writing of the nature, cause, date of commencement and expected impact of the event. Supplier must exercise due diligence in proceeding to meet its performance obligations hereunder notwithstanding the delay. Upon Supplier satisfying these conditions, Company will extend the schedule for the period of time equal to the time actually lost by reason of the delay.
- 8. Damage in Transit.** Notwithstanding the stated F.O.B. point, Supplier shall be responsible for any loss or damage occurring during transit when such loss or damage is attributable either to an act or omission of Supplier or to a failure of Supplier to adhere to the express shipping instructions of Company.
- 9. Reservation of Rights.** Supplier agrees to the following rights of Company: (a) To accept, but without prejudice, any acceptable part of any shipment and at Company’s option and at Supplier’s expense to return or hold and store, any nonconforming part of any shipment. On demand, Supplier shall replace, at no cost to Company, any nonconforming item rejected and shall pay all transportation charges for all replacements. (b) To examine or audit such of Supplier’s books and records of incurred costs and invoices as may be pertinent to verify or supplement information supplied by Supplier or requested by Company relating (i) to payment for goods furnished other than on a firm price basis, (ii) to progress payments or (iii) to the negotiation of price adjustment for changes. The purpose of this audit will be for verification and evaluation of proposed payments or adjustments. (c) To expedite the goods furnished under this Order. Supplier will permit Company’s Expediting Representative free access to Supplier’s plants for expediting purposes. Supplier will obtain identical rights for Company’s Expediting Representative in the plants of Supplier’s vendors, sub-suppliers and contractors for their work relating to this Order. (d) To witness each Inspection Point at Supplier’s plant. Supplier will give Company’s Inspector five (5) working days notice prior to the occurrence of each Inspection Point. Supplier will obtain identical rights for Company’s inspector in the plants of Supplier’s vendors, sub-suppliers and contractors for their work relating to this Order. If as a result of Supplier failing to fulfill the above inspection requirements, the goods are not inspected, Company may, until the inspection requirements are satisfied, refuse to pay, refuse delivery or return, at Supplier’s cost, goods already delivered or accepted. The making or failure to make any inspection of, or payment for or acceptance of the goods, shall not impair Company’s right to reject

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nonconforming goods, or to avail itself of any other remedies to which Company may be entitled, notwithstanding Company's knowledge of the nonconformity its substantiality or the ease of its discovery.

10. Delivery-Invoices. In the event Supplier delivers the goods prior to their scheduled delivery date, Company may, at its option, (i) refuse to accept the goods and return them at Supplier's expense, or (ii) accept the goods but defer payment until the time when payment would have been due had the goods been shipped according to schedule. The time for payment of invoices, less any discounts offered, shall run only from the date correct invoices are received by Company in accordance with the Payment Terms of this Order.

11. Changes. Company may, at any time, and from time to time, by written Change Order direct or order any changes, additions or deletions in the goods to be supplied hereunder. If such changes, additions or deletions affect the Supplier's time for performance or price, Supplier shall promptly notify Company and, if appropriate, an adjustment in this Order will be negotiated. Failure to notify Company in writing within fifteen (15) days of receipt of the Change Order requesting such change, addition or deletion will result in a waiver by Supplier of such adjustment.

12. Patents. Supplier shall, at its own expense, indemnify, defend and hold harmless Company against any claim, suit or proceeding brought against Company which is based upon a claim, whether rightful or otherwise, that use of the goods furnished under this Order constitutes any infringement of any patent of the United States. Supplier shall pay all damages and costs, including legal fees, awarded against Company. In case the goods are held to constitute an infringement and the use of the goods is enjoined, Supplier shall, at its expense, after obtaining the concurrence of Company, either procure for Company the right to continue using the goods, replace the goods with substantially equal but non-infringing goods, modify the goods so they become non-infringing, or remove the goods and refund the purchase price and the transportation, installation and removal costs. This paragraph shall not apply to any goods manufactured to Company's detailed design. As to such goods Supplier assumes no liability whatsoever for patent infringement. The last two sentences shall not apply where Company merely issues a rating, duty, or performance specification.

13. Warranty Supplier warrants that the goods furnished hereunder shall be free from defects in design, material, workmanship and title, shall conform in all respects to the terms of this Order, and shall be, unless otherwise specified, new and of the best quality. If at any time prior to one (1) year from the date that the goods are first used for the purposes intended by Company or four (4) years from the date of final acceptance by Company, whichever occurs first, it appears that the goods or any part thereof do not conform to these warranties and Company so notifies Supplier within a reasonable time after such discovery, Supplier, at its sole expense and after obtaining Company's concurrence, shall promptly correct such nonconformity or replace the nonconforming goods. The warranty period for such corrected or replaced goods shall be of an equal duration as the original warranty period and shall commence upon acceptance of such corrected or replaced goods. If supplier fails to fulfill its obligations under this paragraph, Company may reject or revoke acceptance and cover by purchasing substitute goods or may proceed to make corrections or accomplish Supplier's work by the most expeditious means available. The cost of cover or correction performed by Company shall be for Supplier's account. Supplier's liability hereunder shall extend to all damages proximately caused by the breach of the foregoing warranties, including incidental damages such as removal and reinstallation costs, inspections costs and all shipping costs.

14. Consequential Damages. (a) Supplier's liability to Company for consequential damages shall not exceed the value of this Order. (b) Company shall not be liable to Supplier for consequential damages of any kind, including, but not limited to, loss of anticipated profits or loss of use of or under utilization of Supplier's labor, facilities or equipment resulting from Company's performance or nonperformance of its obligations under this Order or in the event of Suspension or Termination of this Order pursuant to Paragraphs 19 and 20 respectively.

15. For Work on Company's or its Customer's Premises. If Supplier's performance under this Order involves work by Supplier on the premises of Company or one of its customers, Supplier shall take all necessary precautions to prevent the occurrence of any injury to person or damage to property during the progress of such work. Except to the extent that any such injury or damage is due solely and directly to Company's or its customer's negligence, as the case may be, Supplier shall defend and indemnify Company and its affiliates against any claim which may result in any way from any act or omission of the Supplier, its agents, employees or subcontractors. Supplier shall maintain Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed above), Automobile Liability and Employers' Liability insurance with limits as reasonably required by Company, as well as appropriate Workers' Compensation insurance as will protect Supplier from all claims under any applicable Workers' Compensation and Occupational Disease Act. Supplier shall furnish to Purchaser a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverages are in effect and naming Company and its affiliates as additional insureds. In

addition such certificate shall indicate that the insurer will not cancel or materially change the coverage until ten (10) days after prior written notice has been delivered to the Company. For and in consideration of this order, Supplier hereby submits each of its employees, agents, representatives, vehicles and equipment which enter or leave Company's premises to customary plant security procedures in effect at said premises.

16. Publicity. Information concerning Company matters, including press releases announcing the award of Company work, shall not be released publicly without the prior written consent of Company which may be withheld at its sole discretion.

17. Compliance. Supplier, in performing its work hereunder, shall ascertain and comply with all applicable Federal, State, and local laws, regulations, and ordinances, including, but not limited to, the Foreign Corrupt Practices Act of 1977, as amended, especially as it relates to payments or gifts to officials, employees, or representatives of foreign governments and Supplier agrees that it and all who act on their behalf shall fully and faithfully comply with that Act, and with all applicable trade or industry codes, regulations and standards. Where applicable the following provisions are hereby incorporated by reference in this Order: (a) Executive Order 11246, and 41 CFR Part 60, as well as 41 CFR Subpart 1-12.8, relating to Equal Employment Opportunity (b) Executive Order 11701, as amended, and 41 CFR Part 50-250, 41 CFR Part 60-250, relating to Disabled Veterans and Veterans of the Vietnam Era; (c) the Americans With Disabilities Act of 1990, Titles I and V.

18. Non-Waiver. Failure or delay of Company to insist upon strict performance of any of the terms and conditions hereof, or to exercise any rights or remedies provided herein or by law, or to properly notify Supplier in the event of breach, or Company acceptance of or payment for any goods hereunder or approval of any design, shall not release Supplier from any of the warranties or obligations of this Order and shall not be deemed a waiver of any right of Company to insist upon strict performance hereof, or of any rights or remedies of Company as to any such goods (including the right to reject nonconforming goods or to revoke acceptance of such goods) regardless of when shipped, received or accepted, or of any right or remedy of Company as to any prior or subsequent default hereunder.

19. Suspension. Company may at its option, by written Change Order direct Supplier to suspend all or any part of its work or to suspend deliveries upon ten (10) days notice. Supplier agrees to resume any suspended work or deliveries as soon as practicable after receipt of a written Change Order with instructions to do so. Upon suspension of the work or deliveries hereunder, Supplier agrees to waive all claims for damages, including claims associated with the loss of use of or under utilization of Supplier's labor and facilities and the associated overheads thereon. If as a result of suspension, Supplier's costs for completing performance hereunder are increased over the costs Supplier would have incurred had the work or deliveries not been suspended, Supplier agrees to accept as its sole remedy for the suspension of the work or deliveries the amount of such increase. Supplier will include language identical to the preceding paragraph in all agreements entered into with third parties, including, but not limited to, vendors, sub-suppliers and contractors in furtherance of the work required under this Order.

20. Termination. Company may, at its option, by written Change Order, terminate this agreement or any part thereof upon ten (10) days notice. Upon such termination, Supplier agrees to waive all claims for damages, including claims for loss of anticipated profits and claims for the loss of use or under utilization of Supplier's labor, facilities and equipment and the associated overheads thereon, and to accept as its sole remedy for termination the cost of all work performed prior to the date of termination, including reasonable overheads and profit thereon and reasonable costs incurred by Supplier in terminating the work. Company shall have no liability whatsoever for goods which are Supplier's standard stock. Termination shall not relieve Supplier of any of its obligations for goods delivered hereunder. Supplier will include language identical to the preceding paragraph in all agreements entered into with third parties, including, but not limited to, vendors, sub-suppliers and contractors in furtherance of the work required under this Order.

21. Technical Data. All materials and documents prepared or developed by Supplier in connection with the performance of this Order, including all manuals, data, designs, drawings, plans, specifications, reports, calculations and summaries, shall become the property of Company when prepared, whether delivered to Company or not, and shall, together with any materials and documents furnished to Supplier by Company, be delivered to Company upon request and, in any event, upon termination or completion of this Order.

22. Subcontracting. Supplier shall not subcontract nor delegate performance of all or any substantial part of the work called for under this Order without the prior written consent of Company.

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23. Set-Off. Company shall be entitled to set-off any amount owing at any time from Supplier to Company or any of its affiliated companies against any amount payable at any time by Company or any of its affiliated companies to Supplier.

24. Disclosure of Knowledge or Information. Any knowledge or information which Supplier shall have disclosed or may hereafter disclose to Company in connection with a request for a quotation or the purchase of goods or the services covered by this Order and Company's Material Schedule, shall not, unless otherwise specifically agreed upon in writing by Company, be deemed to be confidential or proprietary information, and shall be acquired free from any restrictions other than a claim for patent infringement as part of the consideration for this Order.

25. Notices. All notices required under this Order shall be sent to Company's Buyer.

26. Applicable Law. This Order, and the rights, obligations and liabilities of Company and Supplier shall be construed pursuant to the laws of the State of Michigan.

27. Information. Supplier shall keep confidential any technical, process or economic information derived from drawings, specifications and prototype articles, and other data furnished by Company in connection with this Order and shall not divulge, export, or use, directly or indirectly, such information for the benefit of any other party without obtaining Company's prior written consent. Except as required for the efficient performance of this Order, Supplier 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 Company. If any reproduction is made with prior consent, this notice shall be provided thereon. Upon completion or termination of this Order, Supplier shall promptly return to Company all materials and any copies thereof; such request may be made at any time during or after completion of Supplier's performance. The obligations under this clause shall survive the cancellation, termination or completion of this Order.

28. Drawings. Unless otherwise specifically agreed in writing by Company any check or approval of drawings by Company will be for Supplier's convenience and will not relieve Supplier of its responsibility to meet all requirements of this Order.

29. Survival of Terms. Those provisions of the Order which by their very nature are incapable of being performed or enforced prior to expiration or termination of the Order or which suggest at least partial performance or enforcement following such expiration or termination shall survive any such expiration or termination of the Order.