

1. **CONTRACT.** This Purchase Order includes these Purchase Order Terms and Conditions, the purchase order form (the "Form") and any exhibits thereto. These form the Contract, and all are as fully a part of the Contract as if attached to this Purchase Order or fully set forth herein. Commencing performance of or accepting this Purchase Order shall indicate Supplier's intent to be bound by the terms and conditions of the Contract Documents (the "PO Terms"), shall constitute an acceptance by Supplier of each of the PO Terms, and shall form a contract under the laws of the State of Michigan, with venue in Marquette County, Michigan. The Contract Documents shall constitute the entire agreement between the parties with respect to the subject matter of this Contract and may not be modified, added to or rescinded except by a subsequent written notice signed by Purchaser. Notice of objection is hereby given to any different or additional terms in Supplier's quotations, acknowledgments, invoices, or in any other communication from Supplier unless Purchaser expressly agrees to such terms in writing. Payment, acceptance of goods, or inaction by Purchaser shall not constitute Purchaser's consent to or acceptance of any such terms.

2. **PARTIES.** (a) Purchaser or Owner (terms are interchangeable); and (b) Supplier or Contractor (terms are interchangeable). As set forth on the Form.

3. **TERMS.** (a) The term "goods" includes goods, material, chattels, equipment, machinery, manufactured articles, merchandise, fixtures, products, software, appliances, plant and any other items to be supplied pursuant to this Purchase Order. (b) The term "warranty" includes warranties, guarantees, representations and promises.

4. **DELIVERY.** The goods shall be tendered by delivery to Purchaser at the time and place specified in the "SHIP TO" Section on the Form. The times set forth for delivery are of the essence. Supplier is responsible for maintaining and providing proof of delivery. Packing lists must accompany each case or parcel, showing this POs number and a complete description of contents. Supplier shall prepay all transportation charges. If transportation of the goods is undertaken by an entity other than Supplier, Supplier shall be responsible for and handle all claims against such entity for shortages, damages, theft and other such occurrences.

5. **IDENTIFICATION/RISK OF LOSS/TITLE.** Identification of the goods shall occur as soon as the Purchase Order is received by Supplier. Risk of loss of and clear title to the goods shall pass to Purchaser at the time that conforming goods are received and accepted by Purchaser.

6. **PURCHASE PRICE.** The Purchase Order Total Price (also referred to as the Contract Sum) and Unit Prices shall be as specified on the Form, subject to Section 9 hereof. They shall not include sales and use taxes for which an exemption is applicable. Purchaser shall have no responsibility for payment of over shipments, goods not delivered due to shortages, theft, etc., or otherwise non-conforming shipments. Purchaser's count shall be accepted as final and conclusive for all shipments. If Purchase Price is omitted and is not covered by a blanket order or agreement, this order is to be filled at the lower of (i) the price last quoted or charged or (ii) the lowest prevailing market price. All prices are FOB Purchaser's on-site receiving area unless otherwise specified. If shipment is indicated as FOB Supplier's plant, Supplier will arrange for shipping, prepay the freight charges and add them to the invoice. Collect shipments will be returned at Supplier's expense.

7. **PAYMENT.** Payment shall be processed generally as follows: One invoice shall be submitted for the Purchase Order. No invoices will be processed for payment until Purchaser has received goods, has

inspected them and has determined that they are conforming. Invoices shall be considered as dated the later of the day the invoice is received or the day the goods are received and accepted by Purchaser. Payment for conforming goods shall be paid within thirty (30) days of the later of the date of Final Completion or the date of the invoice. With respect to invoices covering mechanical equipment and similar goods which cannot immediately be put into operation, Purchaser reserves the right to withhold from payment of such invoice retainage of 10% of the amount thereof pending approval of the operation of such equipment and/or goods. Purchaser shall pay for the goods by check. Payments on cash discount items will be rendered less any applicable cash discount.

8. **WARRANTIES.** (a) Supplier warrants to Purchaser that all items covered by this Purchase Order conform to the samples, drawings, specifications, plans, or other descriptions provided by Purchaser (collectively, "Specifications"). Suppliers are not authorized to substitute. All goods shall be merchantable; fit for Purchaser's intended purpose; of good material, workmanship and design, and free from defect. Supplier also guarantees that the goods are of sufficient size or capacity to perform as specified. (b) Supplier agrees that Purchaser and any representative designated by Purchaser, for itself and on behalf of Purchaser ("Purchaser's Representative"), shall have the benefit of all manufacturers warranties, express or implied, issued on or applicable to the goods, and Supplier authorizes Purchaser and/or Purchaser's Representative to obtain the customary services furnished in connection with such warranties and guaranties. Supplier hereby assigns such warranties to Purchaser. (c) This Purchase Order incorporates by reference any and all warranties (express, implied, oral or written) made by Supplier prior to or at the time this Purchase Order is accepted, including those contained in brochures, catalogues, advertisements, owner's manuals, etc., provided that in the event of a conflict, the warranty providing the most protection to Purchaser shall prevail. (d) All warranties shall survive inspection, acceptance and payment. (e) Supplier agrees to repair or replace free of charge any goods or parts of goods which prove defective or which operate unsatisfactorily. This warranty does not apply to normal effects of corrosion or wear and tear. Such remedies shall be available to Purchaser in addition to all others afforded to it by this Contract or at law or equity.

9. **RIGHT OF INSPECTION.** Within a reasonable time after delivery of the goods in accordance with Section 4, Purchaser shall have the right to inspect the goods to determine their conformity with the Specifications. Thirty (30) days from the date of delivery or installation is deemed to be the reasonable time for Purchaser to inspect goods. If all or any part of the goods are found to be non-conforming, Purchaser may reject non-conforming goods, such shall be removed by Supplier at Supplier's cost, and the Purchase Price respect to such rejected goods either shall be refunded by Supplier if already paid, or shall be reduced if still owing. In either case, if Purchaser so directs in writing, Supplier shall promptly replace such non-conforming goods with goods conforming to the Specifications. All direct and incidental costs of rejecting and removing such non-conforming goods shall be borne by Supplier.

10. **REMEDIES.** In addition to remedies provided in the Contract Documents, Purchaser shall have all other rights and remedies available under applicable law. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CONTRACT DOCUMENTS, IN NO EVENT SHALL SUPPLIER BE ENTITLED TO ANY PAYMENT ON ACCOUNT OF LOST PROFITS OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY TERMINATION OF THE CONTRACT, OR OTHERWISE IN CONNECTION WITH THE CONTRACT.**

11. **INDEMNIFICATION.** To the fullest extent permitted by law, Supplier shall indemnify and hold harmless Purchaser and any Purchaser's Representative and all of their respective trustees, directors,

officers, employees and agents (collectively, "Goods Indemnities") from and against all claims, liabilities, damages, losses, costs (including, without limitation, reasonable legal fees) and expenses (collectively, "Claims"), arising from or relating to the undertaking of Supplier hereunder or any defect(s) in the goods supplied, provided such Claims are caused in whole or in part by any negligent act, omission, recklessness or willful misconduct of Supplier or anyone for whose acts Supplier may be liable, or provided Supplier may be held responsible for same under products liability law or under other applicable legal or equitable principles. Supplier further agrees to assume the defense of any suit brought against Goods Indemnities and to protect Goods Indemnities from all claims arising out of claims for infringement of any patent, invention, design, trademark or copyright in connection with the goods.

12. REGULATORY COMPLIANCE AND NONDISCRIMINATION. The Supplier must comply with all Federal, State, County, and local laws, ordinances, rules, regulations, orders, notices, requirements, and permits that in any manner affect the provisions herein. The Purchaser shall not be liable to the Supplier for any legal fees, court costs, or other legal expenses arising from the interpretation or enforcement of this PO, or from any other matter generated by or relating to this PO.

13. WAIVER OF LIENS. (a) Supplier, for itself and for all its Subcontractors, agrees that no mechanic's or materialman's lien or other claim shall be filed or maintained by Supplier or by any Subcontractor, laborer or any other person, whatsoever, for or on account of any work done on goods furnished under this Contract This agreement shall be an independent contract (b) In every subcontract entered into by Supplier after the execution and delivery of the Contract or in connection herewith, Supplier shall incorporate a provision similar to the foregoing subsection to the effect that neither the Subcontractor nor any party acting through or under it shall file or maintain any mechanic's lien or other claim against Purchaser in connection with the work.

14. WAIVER OF BREACH. Waiver, forbearance or inaction by Purchaser of a breach by Supplier of any PO Term shall not be deemed a waiver of future compliance with all PO Terns, and all such PO Terms shall remain in full force and effect as to future performances.

15. CANCELLATION/TERMINATION. The Purchaser may, with or without cause, whenever the interests of the Purchaser so require, terminate the PO, in whole or in part, for the convenience of the Purchaser, by written notice to the Supplier. Unless directed differently in the notice of termination, the Purchaser shall incur no further obligations in connection with the PO. The Supplier shall only be compensated for accepted goods up to the date of termination. Supplier shall not claim and expressly waives any claims for prospective, consequential, or indirect damages, including, but not limited to, claims for lost profit.

16. ASSIGNMENT/DELEGATION. Supplier shall neither assign any right or interest in this contract, nor delegate any obligation owed by it hereunder without the prior written consent of Purchaser. Any attempted assignment or delegation absent Purchaser's consent shall be wholly void and totally ineffective for all purposes.

17. MISCELLANEOUS. (a) No agreement or other understanding in any way modifying the Contract Documents shall be binding upon Purchaser unless made or accepted by Purchaser in writing. This Purchase Order shall be subject to modification, amendment and/or cancellation by Purchaser in event of fire, accident, strike, Government acts or other conditions beyond Purchaser's control. Purchaser shall promptly provide to Supplier written notice of the occurrence of such events requiring such

modification, amendment and/or cancellation. (b) This writing and the other Contract Documents are intended by the parties as a final expression of their agreement with respect to the subject matter hereof. (c) Any provision in the Contract Documents that is held to be inoperative, unenforceable, voidable or invalid in any jurisdiction shall as to that jurisdiction, be ineffective, unenforceable, void or invalid without affecting the remaining provisions, or the enforceability of all provisions in any other jurisdiction and to this end, the provisions hereof are declared to be severable. The contract resulting from the acceptance of this Purchase Order is to be governed by and construed in accordance with the laws of the State of Michigan without regard to the choice of laws provisions thereof. The Supplier agrees to bring any federal or state legal proceeding arising under this Contract in a court of competent jurisdiction within Marquette County, Michigan. This Section shall not be construed to limit any rights a party may have to intervene in any action, wherever pending, in which one of the others is a party. (e) All indemnification, payment, warranty, lien waiver, title and remedies provisions shall survive the termination or expiration of this Purchase Order.