



MODUCOATINGS

General Terms and Conditions of Purchase

1. Scope

1.1 Supplier acknowledges and agrees that these General Terms and Conditions of Purchase (the "Terms and Conditions") are incorporated in, and made a part of, each purchase order, requisition, work order, shipping instruction, specification or other document, whether expressed in written form, by electronic data interchange or other tangible format provided to Supplier. The Terms and Conditions shall be applicable to all purchases made by ModuCoatings, its subsidiaries and divisions and any entity controlling, controlled by, or under common control with it ("Buyer"), from the Supplier, whether purchases are for tooling, machines, parts, raw materials, or other various goods or services (the "Supplied Goods").

1.2 A Purchase Order (as defined below) and the Terms and Conditions shall constitute the entire agreement applicable to and binding on Buyer for the Supplied Goods, and expressly excludes any application by the Supplier to substitute its general terms of sale as well as any documents issued now or in the future by the Supplier relating, directly or indirectly, to the Supplied Goods. Any proposal, offer, counter-offer, or other attempt by the Supplier to vary any of the Terms and Conditions shall be rejected, and Supplier agrees that any such additional or inconsistent terms shall have no force and effect. Notwithstanding the foregoing, any stenographic or clerical errors to the Terms and Conditions are subject to correction by Buyer.

2. Price, Invoicing and Conditions of Payment

2.1 All prices for Supplied Goods shall be as stated in the purchase order (the "Purchase Order"). Supplier shall be solely responsible for all transport and unloading costs, customs charges, taxes and insurance costs, unless otherwise specified on the Purchase Order.

2.2 Supplier's invoice shall include all information appearing on the Purchase Order necessary for identification and origin of the Supplied Goods. The invoice shall be sent to the invoicing address written on the face of the Purchase Order.

2.3 No payment shall be made by Buyer in advance of receipt of the Supplied Goods. Unless otherwise stated on the Purchase Order, the Supplier's invoice shall be payable, sixty (60) days from the date of invoice. All invoicing and payments shall be made through electronic data interchange.

2.4 Payment for Supplied Goods shall not constitute final acceptance of the Supplied Goods or waive Buyer's right to reject the Supplied Goods. Buyer may reject the Supplied Goods and hold Supplier in default if, at any time, Buyer, or any of its customers, discovers the Supplied Goods to be defective or otherwise not conforming with the requirements of the Purchase Order.

2.5 In addition to any right of setoff provided by law, all amounts due to Supplier shall be considered net of indebtedness of Supplier and its affiliates/subsidiaries to Buyer, and Buyer shall have the right to set off against or to recoup any amounts due to Supplier and its affiliates or subsidiaries from Buyer.



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2.6 Supplier may not assign any accounts receivable from Buyer to third parties without the prior written approval of Buyer.

2.7 Supplier warrants that the prices for the Supplied Goods sold to Buyer are no less favorable than those prices Supplier currently extends to any other customer for the same or similar Supplied Goods in similar quantities. If Supplier reduces its prices to third parties during the term of a Purchase Order for the Supplied Goods, Supplier shall correspondingly reduce the prices charged to Buyer. Supplier warrants that the prices on the Purchase Order are complete and that no other charges will be added without Buyer's written consent.

2.8 Buyer has the right to audit and review all records of Supplier to enable Buyer to verify the accuracy of the amounts charged for the Supplied Goods, assess Supplier's ongoing ability to perform its obligations under a Purchase Order and Terms and Conditions or to verify any claim submitted to Buyer in accordance with these Terms and Conditions. Supplier agrees to maintain all records relating to the Supplied Goods for a period of four (4) years following final payment under any Purchase Order.

3. Forecasts

3.1 Buyer may provide Supplier with estimates or forecasts of its future anticipated volume or quantity requirements for Supplied Goods. Supplier acknowledges that any estimates or forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time.

3.2 Buyer makes no representation, warranty, guaranty or commitment, express or implied, regarding any estimates or forecasts provided to Supplier, including the accuracy or completeness of the estimates or forecasts.

4. Compliance

4.1 Without prejudice to the provisions of Section 4.2, the Supplied Goods shall be manufactured in compliance with the Terms and Conditions.

4.2 Supplier warrants that the Supplied Goods shall be manufactured, sold and shipped in compliance with any and all applicable federal, state and local laws, regulations and standards in force in the United States and in the country of manufacture and sale, including those that relate to the quotations, pricing, manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Supplied Goods, including those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon request from Buyer, Supplier shall certify in writing its compliance with this Section 4.2.

4.3 At the request of Buyer, Supplier shall provide an appropriate certificate stating the country of manufacture of the Supplied Goods.

4.4 Supplier shall comply with all quality requirements as specified by Buyer, including, but not limited to, QS 9001, 14001 and ISO/TS 16949.



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4.5 Supplier shall participate in productivity initiatives in order to improve quality of the Supplied Goods, increase customer satisfaction or reduce costs of the Supplied Goods.

5. Technical Information

5.1 Supplier shall create, maintain, update and provide to Buyer, all technical information relating to the Supplied Goods, including information subject to industrial or intellectual property rights and information that may relate to tooling, machines or equipment, software, works of authorship, computer programs and databases (including object code, micro code, source code and data structures) and all enhancements, modifications and updates to such information (the "Technical Information"). The Technical Information shall not be subject to any use or disclosure restriction.

5.2 Upon a breach by Supplier of these Terms and Conditions, Supplier grants to Buyer a royalty free, fully paid license for all Technical Information in order to manufacture, or have manufactured, the Supplied Goods. At Buyer's request, Supplier shall transfer to Buyer ownership of the tooling and equipment necessary to manufacture the Supplied Goods, whether or not such tooling and equipment has been paid for by Buyer.

5.3 Supplier agrees not to assert any claim (other than patent infringement) against Buyer, Buyer's customers or their respective suppliers with respect to any Technical Information that Supplier discloses under the Terms and Conditions.

5.4 Buyer shall own all right, title and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property developed by Supplier under these Terms and Conditions. Supplier shall assist Buyer in perfecting its right, title and interest and shall execute and deliver all documents reasonably requested by Buyer in order to perfect, register or enforce the same. Buyer shall reimburse any associated costs incurred by Supplier in providing such assistance.

5.5 If a third party asserts claims of actual or alleged infringement of any Technical Information relating to the Supplied Goods, Supplier, at no expense to Buyer, shall obtain for Buyer and its customers, the right to manufacture, use and sell the Supplied Goods or shall substitute an equivalent item acceptable to Buyer, and shall reimburse Buyer for any costs incurred related to this Section 5.5.

6. Packaging and Transport

6.1 Unless otherwise provided in a Purchase Order, the Supplied Goods must be packed and packaged to ensure their safe delivery in accordance with the Terms and Conditions, industry standards and where incorporated, Buyer's packaging specifications.

6.2 Buyer may, at any time, change packaging or transport requirements. Supplier shall be responsible for any damage to the Supplied Goods arising from packaging or transport. If requested by Buyer, Supplier shall promptly furnish to Buyer (a) a list of all ingredients in the Supplied Goods and corresponding amounts of ingredients, and (b) information concerning any changes in or additions to such ingredients. 6.3 Supplier shall provide all Material Safety Data Sheets and "hazardous substance" warnings related to all shipments of Supplied Goods that constitute hazardous materials, together with special handling instructions advising Buyer and third parties, including transportation carriers, as to the degree of care and precaution that will prevent bodily injury or property damage in handling, transporting, processing, using, recycling or disposing of the Supplied Goods.



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6.4 The Supplied Goods, as packaged, shall be labeled as required under federal, state and local regulations, regulations from the country of manufacture and supply shall include any storage requirements, Buyer's Purchase Order number, description of the Supplied Goods, and quantity and the gross or net weight of Supplied Goods. Supplier shall include a bill of lading consisting of delivery and identification information for the Supplied Goods, including a clear description of the origin of the Supplied Goods.

7. Ownership of the Supplied Goods

7.1 Notwithstanding Article 9, all right, title and interest in and to the Supplied Goods shall be transferred to Buyer immediately upon its identification in the Purchase Order. Supplier shall not impose or permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supplied Goods.

7.2 If Buyer purchases or finances all or part of the raw materials or semi-finished products for incorporation into the Supplied Goods, the raw materials and semi-finished products shall become the property of Buyer immediately upon payment. Supplier, as bailee, shall identify the raw materials and semi-finished products by plainly marking them as Buyer owned property.

7.3 All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products, materials and other items (collectively "Tools") purchased by or furnished by Buyer, in whole or in part, or by third parties on Buyer's behalf, to Supplier under these Terms and Conditions, or for which Supplier has been reimbursed by Buyer, shall remain the property of Buyer and shall not be pledged to any third party. Supplier shall provide Buyer with drawings, technical specifications, FMEA's and control plans for the Tools. Supplier shall bear the risk of loss and damage to the Tools. The Tools shall at all time (a) be properly stored, operated and maintained by Supplier, (b) not be used by Supplier for any purpose other than the performance of these Terms and Conditions, (c) be deemed to be personal property of Buyer, not a fixture, (d) be conspicuously identified as property of Buyer with relevant part numbers, (e) not be commingled with other property of Supplier or with that of a third party and (f) not be moved from Supplier's premises without Buyer's prior written approval.

7.4 Supplier shall insure the Tools for damage or loss (including theft) in an amount not less than replacement value and shall maintain general liability insurance regarding operation of the Tools in amounts and coverage reasonable in the circumstances and acceptable to Buyer.

7.5 Upon the request of Buyer, the Tools shall be delivered to Buyer by Supplier, either (a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the Terms and Conditions and requirements of the carrier selected by Buyer, or (b) to any location designated by Buyer, provided that Buyer shall pay Supplier the reasonable cost of delivering the Tools to the location. Buyer has the right to enter Supplier's premises at all reasonable times to inspect the Tools and Supplier's records with respect to the Tools.

7.6 Buyer does not guarantee the accuracy of any Tools or the availability or suitability of any Tools furnished by Buyer to Supplier, including any warranty, either express or implied, as to fitness, condition, merchantability, design or operation or fitness for a particular purpose. Supplier agrees to check carefully and approve all Tools supplied by Buyer prior to use. Supplier shall assume all risk, loss, damages, injuries or expenses arising, either directly or indirectly, from the use,



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maintenance, repair of the Tools, including any interruption of service or loss of business, profits or any other indirect, special or consequential damage and/or personal injury or death.

7.7 In any dispute involving ownership of Tools, there is a rebuttable presumption that Buyer is the sole owner of the Tools and Supplier grants Buyer a security interest in the Tools to secure Supplier's obligations under these Terms and Conditions. Supplier authorizes Buyer, at Buyer's sole option, to file financing statements to evidence Buyer's interest in the Tools.

7.8 Supplier grants Buyer an exclusive, irrevocable option to purchase any Tools owned by Supplier and used in the manufacture of the Supplied Goods at a price agreed upon in writing by the parties, but in no event greater than the replacement cost of the Tools less depreciation. Buyer may exercise this option at any time, provided that Supplier does not utilize the Tools owned by Supplier for staple goods for third parties. Supplier shall obtain any applicable waiver, release or approval from financing sources so that Buyer may exercise its rights under this Section 7.8.

8. Delivery

8.1 Unless otherwise specified by Buyer, delivery of the Supplied Goods shall be F.O.B Buyer facility as indicated on the Purchase Order. Buyer shall have the right, by written notice, to suspend work or make changes from time to time in the Supplied Goods to be provided by Supplier under a Purchase Order, or the delivery thereof.

8.2 Supplier shall take all measures necessary to meet the delivery date for the Supplied Goods and comply with the Terms and Conditions. Deliveries shall be made in the quantities, on the dates, and at the times specified by Buyer in the Purchase Order.

8.3 Supplier shall not fabricate, assemble or ship any Supplied Goods, or procure materials or Tools, except to the extent authorized by the Purchase Order. Buyer shall not pay for any Supplied Goods, materials, Tools and related costs that are not authorized pursuant to the Buyer Purchase Order.

8.4 Supplier agrees that time is of the essence. Supplier further agrees that if Supplier fails to deliver conforming Supplied Goods pursuant to the schedules set forth in the Purchase Order, Buyer may obtain substitute or replacement Supplied Goods without notice to Supplier, and thereafter reject any late Supplied Goods tendered by Supplier, even if conforming, and/or elect to terminate the Purchase Order by written notice to Supplier. Supplier shall be responsible for all general, consequential, and incidental damages incurred by Buyer as a result of Supplier's failure to meet delivery schedules with conforming goods, including but not limited to, the cost of any line shutdown, the cost of obtaining Supplied Goods from an alternate source and expedited or premium freight or transportation costs. In addition to the above remedies, Buyer may apply late delivery penalties of 10% of the invoice amount against any invoice, for all Purchase Orders for which the Supplied Goods were delivered late to Buyer. Buyer's actions in obtaining substitute or replacement products shall not constitute an election of remedies, nor shall it in any way limit the rights and remedies of Buyer under the Purchase Order for breach by Supplier.

8.5 Supplier shall provide written notice to Buyer immediately of any actual or potential labor dispute, and all related information relating to the dispute, which may delay or threaten to delay the timely performance of Supplier under a Purchase Order. Buyer may purchase Supplied Goods from a third party immediately upon receipt of notice from Supplier, if Buyer deems it necessary, in its sole discretion. Supplier shall notify Buyer six (6) months in advance of the expiration of



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any current labor contract(s). Prior to the expiration of any labor contract, Supplier shall store, at its expense, a minimum thirty (30) day inventory of finished Supplied Goods at a warehouse unaffected by the labor contract.

9. Risk of Loss

Risk of loss with respect to the Supplied Goods shall remain with the Supplier until the Supplied goods have been delivered to and accepted by Buyer, or an agent or consignee duly designated by Buyer, at the location indicated on the Purchase Order.

10. Changes

10.1 Buyer shall have the right, by written notice, to suspend work or make changes from time to time in the Supplied Goods to be provided by Supplier under a Purchase Order, or the delivery thereof. Unless subject to Section 13, if any such change causes an increase or decrease in the cost of or time required for performance of a Purchase Order by Supplier, an equitable adjustment shall be negotiated promptly and in good faith by the parties, and the Purchase Order shall be modified in writing accordingly. Supplier must submit in writing any claim for adjustment to Buyer within thirty (30) days from the date that notification of the change is received by Supplier. Upon approval of the claim by Buyer, any excess or obsolete Tools or Supplied Goods set forth in the claim shall become the property of Buyer, to dispose or utilize as Buyer deems necessary. Notwithstanding the foregoing, Supplier shall be required to continue to perform under the revised Purchase Order.

11. Acceptance of Supplied Goods

11.1 The Purchase Order shall be deemed to have been accepted by Supplier and constitute a binding contract upon the earlier of Supplier's (a) written acknowledgment, (b) commencement of work on the Supplied Goods or (c) shipment of the Supplied Goods. Buyer may revoke its offer or terminate a Purchase Order without liability to Supplier at any time before Buyer receives actual notice of Supplier's acceptance. If the Purchase Order shall be deemed accepted based on a prior offer by Supplier, such acceptance is limited to and expressly made conditional on assent to the express terms set forth in the Purchase Order.

11.2 Buyer and its customers shall have the right to enter Supplier's premises at reasonable times to verify that the Supplied Goods conform to the Purchase Order. Supplier agrees to provide all supporting documentation requested by Buyer in the course of the investigation. Final acceptance of the Supplied Goods by Buyer shall not be conclusive with respect to latent defects or misrepresentations.

11.3 Buyer reserves the right to reject or revoke acceptance of nonconforming Supplied Goods, which includes but is not limited to defects or defaults revealed by inspection, analysis or subsequent manufacturing operations, even though such items previously may have been accepted, non-compliance with the Purchase Order or noncompliance with the date and hours of delivery at any time.

11.4 In addition to Article 11.3 and any other remedies Buyer may have, at its option, Buyer may (a) correct or have corrected the non-conforming Supplied Goods at Supplier's expense, (b) reject and return the Supplied Goods at Supplier's own risk and expense or (c) instruct Supplier to retrieve the non-conforming Supplied Goods at its expense within eight (8) days of notification of rejection or revocation of acceptance. Buyer shall be permitted to dispose of the



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Supplied Goods upon Supplier's failure to retrieve the non-conforming Supplied Goods. If defects or deficiencies in the Tools provided by Supplier are discovered by Buyer prior to a successful runoff and final acceptance, Buyer shall be entitled to, among other remedies, a return of all sums paid to date under this contract.

11.5 Supplier shall be responsible for the design and manufacture of the Supplied Goods to the extent designated by Buyer in the Purchase Order or as otherwise agreed to in writing by the parties, regardless of any assistance provided by Buyer or approval by Buyer.

12. Express Warranty

12.1 Supplier expressly warrants for the Warranty Period (as defined in this Article 12) that (a) the Supplied Goods shall strictly conform to the Purchase Order, including instructions, advertisements, statements on containers or labels, descriptions and samples, then current release/revision levels of specifications and drawings, (b) the Supplied Goods shall be free from defects in workmanship and material and shall be new and of the highest quality, (c) Buyer shall receive title to the Supplied Goods that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement, (d) the Supplied Goods shall be merchantable, safe and fit for any purpose intended by Buyer or Buyer's customer, including the specified performance in the component, system, subsystem and environment in which the Supplied Goods is or reasonably may be expected to perform and (e) Supplier's performance shall be in strict accordance with these Terms and Conditions.

12.2 The warranties in this Article 12 shall be in addition to all other warranties afforded to Buyer by operation of law or by industry standards, except that no course of dealing or usage of trade shall be applicable unless expressly incorporated into these Terms and Conditions by a writing signed by the parties.

12.3 These warranties shall survive the expiration or termination of the Terms and Conditions and shall apply to Buyer, its successors, assigns, customers and the end-users of Buyer's Supplied Goods. These warranties may not be limited or disclaimed by Supplier.

12.4 Buyer's approval of Supplier's design, material, process, drawing, specifications or the like for the Supplied Goods shall not be construed to relieve Supplier of strict compliance with the warranties in this Article 12. For purposes of these Terms and Conditions, "Warranty Period" shall be the longer of the following time periods (a) forty eight (48) months from the date of first use of the Supplied Goods by Buyer or acceptance by Buyer, whichever occurs later, (b) if the Supplied Goods are incorporated, in whole or in part, into products sold by Buyer to third parties, the latter of the following dates (i) eighteen (18) months after acceptance by such third parties, (ii) the time period of warranty that such third parties give to their customers, or (iii) the date on which any longer or broader federal, state or local law, regulations may require, including those regulations of countries in which the Supplied Goods is installed, used or sold.

12.5 Notwithstanding the expiration of the Warranty Period, if Buyer, its customers or the manufacturer of the vehicles (or other finished product) on which the Supplied Goods, or any parts, components or systems incorporating the Supplied Goods, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such vehicles to provide remedial action to address a defect that relates to motor vehicle safety or the failure of the vehicle to comply with any applicable law, safety standard or guideline (a "recall"), Supplier shall nonetheless be liable for costs and damages associated with the recall to the extent that the costs and damages are based upon a reasonable determination that the Supplied Goods fails to conform to these Terms and Conditions.



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13. Product Support

Supplier warrants that the Supplied Goods, including the sub-assemblies and spare parts, shall be made available by Supplier to Buyer and its customers for ten (10) years after the date of final shipment of the Supplied Goods under the Terms and Conditions. During this period, Supplier shall continue to provide technical support and service at the same level as presently provided.

14. Indemnification and Insurance

14.1 To the fullest extent permitted by law, Supplier shall indemnify, hold harmless and defend Buyer and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, legal actions, claims, investigations, or any threat of same, and all other obligations and proceedings, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Indemnitees, and any cost incurred in connection therewith (including but not limited to fees and expenses of lawyers and

other professionals incurred in investigating or defending the same and any cost of a product recall) ("Liabilities") arising out of a breach of the Purchase Order or Terms and Conditions. However, Supplier's obligation to indemnify Buyer shall not apply to any Liabilities arising from Buyer's sole negligence.

14.2 Supplier shall maintain insurance coverage in amounts not less than the following: (a) Worker's Compensation – Statutory Limits for the state or states in which this agreement is to be performed (or evidence of authority to self-insure); (b) Employer's Liability – \$1,000,000 for Bodily Injury by Accident per Accident, \$1,000,000 for Bodily Injury by Disease per policy limit, and \$1,000,000 for Bodily Injury by Disease, per employee; (c) Comprehensive General Liability (including Completed Operations and Blanket Contractual Liability) – \$1,000,000 combined bodily injury and property damage per occurrence; (d) Automobile Liability (including owned, non-owned and hired vehicles) – \$1,000,000 combined bodily injury/property damage per occurrence; and (e) Commercial Umbrella limits in the amount of \$5,000,000 per occurrence and \$10,000,000 annual aggregate. Supplier shall furnish certificates of insurance setting forth the amounts of coverage, policy numbers and dates of expiration for insurance maintained by Supplier which shall name Buyer as an additional insured. Such certificates shall provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Supplier's insurance carrier shall be rated a minimum of "A-" or better under the AM Best rating. Supplier's insurance shall be primary and must offer a blanket waiver of subrogation endorsement. Supplier's purchase of insurance coverage and the furnishing of certificates of insurance shall not release Supplier of its obligations or liabilities under these Terms and Conditions. In the event of Supplier's breach of this Article 14, Buyer shall have the right to cancel the undelivered portion of any Supplied Goods covered by a Purchase Order and shall not be required to make further payments except for conforming Supplied Goods delivered or services rendered prior to cancellation.

15. Confidentiality

All information provided to Supplier by Buyer under these Terms and Conditions shall remain Buyer's property and be considered confidential by Supplier. Supplier shall take all necessary measures to ensure that neither Supplier nor its employees, agents, suppliers or authorized subcontractors, communicate such confidential information to any third party without Buyer's prior written consent and that the information is used only for the purpose submitted. Without obtaining



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the prior written consent of Buyer, Supplier shall not advertise or publish the fact that Supplier has contracted to furnish Buyer Supplied Goods, or use any trademarks or trade names of Buyer in Supplier's advertising or promotional materials. If Supplier is required by legal process to disclose any such confidential information, it shall immediately notify Buyer and use all available efforts to resist such disclosure, or if such resistance is unsuccessful, to obtain a protective order. These confidentiality requirements shall be maintained for the duration of performance under the Terms and Conditions and for a period of five (5) years thereafter. Upon the request of Buyer, Supplier agrees to return to Buyer all information, including all copies thereof, confidential or otherwise, related to the Terms and Conditions.

16. Termination

16.1 Buyer may terminate any Purchase Order in the event of breach by Supplier of these Terms and Conditions or Supplier's failure to provide Buyer with reasonable assurances of future performance upon request. Additionally, Buyer may cancel any Purchase Order in the event of any of the following (i) insolvency of Supplier, (ii) filing of an involuntary or voluntary petition of bankruptcy against Supplier, (iii) execution by Supplier of an assignment for the benefit of creditors or (iv) appointment of a receiver over Supplier's assets. In the event of termination under this subsection 16.1, Buyer shall not be liable to Supplier for any amount, except for conforming Supplied Goods that have been delivered to Buyer prior to termination, and Supplier shall be liable to Buyer for all damages sustained by reason of the default which gave rise to the termination.

16.2 Buyer reserves the right to terminate any Purchase Order, in whole or in part, at any time without liability, at Buyer's convenience. Such termination shall not constitute a default by Buyer. In the event of such termination by Buyer, Supplier, its' suppliers and subcontractors, shall (a) immediately stop all work on such Purchase Order, and (b) upon request by Buyer, transfer title and deliver all finished goods, work in process and/or raw materials which Supplier produced or acquired in connection with such Purchase Order. In the event of a termination for convenience by Buyer (but not termination after default or breach of Supplier), Supplier shall be reimbursed for (a) the Purchase Order price for all finished goods or performed services which conform to the Purchase Order and are delivered to Buyer, and (b) Supplier's reasonable actual cost of work in process or raw materials which Supplier produced or acquired in connection with such Purchase Order and which Supplier cannot reasonably use in its operations within ninety (90) days after the date of termination. Supplier shall furnish any claim for reimbursement of costs within thirty (30) days after termination or any such claim shall be deemed to have been waived. Supplier shall not be paid for any work performed after receipt of the notice of termination, or for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided or that were not authorized pursuant to a valid Purchase Order or material release by Buyer. Buyer's obligation to Supplier upon termination under this subsection 16.2, if any, shall be limited to the express provisions of this section. Without limiting the foregoing, in no event shall Buyer be liable for any lost profits, cancellation charges, or incidental or consequential damages.

16.3 Supplier may not terminate any purchase order once accepted and at all times must continue to deliver the Supplied Goods in accordance with the Purchase Order.

17. Applicable Law and Jurisdiction

These Terms and Conditions shall be governed by the laws of the State of Texas without regard to rules pertaining to conflicts of law. The federal, state and local courts located in the State of Texas shall have exclusive jurisdiction for any disputes relating to these Terms and Conditions. The United Nations Convention on Contracts for the International Sale of



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Goods shall not apply to these Terms and Conditions. If any provision is or becomes invalid or unenforceable under any law, the remaining provisions shall be in full force and effect as written.

18. Work on Premises

If Supplier's work under these Terms and Conditions involves operations by Supplier on Buyer premises or one of its customers, Supplier shall take all necessary precautions to prevent injury to any person or property during the progress of such work. Supplier shall maintain such public liability, property damage and employee's liability and compensation insurance as will protect Buyer from these risks and from any claims under applicable worker's compensation and occupational disease acts. This insurance is in addition to the insurance provisions as set forth in Section 14.2. Supplier's performance under these Terms and Conditions shall be consistent and in accordance with current labor agreements between Buyer and any union organization with which Buyer may have a collective bargaining agreement.

19. Miscellaneous Provisions

19.1 Assignment/Change in Control. Supplier shall not assign, in whole or in part, any Purchase Order or delegate the performance of its duties under any Purchase Order or these Terms and Conditions without the prior written consent of Buyer. Any assignment or delegation without the prior written consent of Buyer, at the option of Buyer, shall serve as a cancellation of the Purchase Order. Any consent by Buyer to an assignment shall not waive Buyer's right to recoupment from Supplier or its assigns for any claim arising out of these Terms and Conditions. If Buyer agrees to the assignment of the Purchase Order, in whole or in part, Supplier shall remain solely liable to Buyer for the adherence of the assignee to these Terms and Conditions. In addition, Buyer may terminate these Terms and Conditions upon giving at least thirty (30) days written notice to Supplier, without any liability to Supplier, if Supplier (i) sells, or offers to sell, a material portion of its assets, (ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Supplier or (iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Supplier.

19.2 Force Majeure. Any delay or failure of either party to perform its obligations shall be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks and sabotage. Written notice of the delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Supplier, Buyer, at its option, may purchase Supplied Goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Buyer, or cause Supplier to procure the Supplied Goods from other sources in quantities and at times requested by Buyer and at the price set forth in the Purchase Order. If requested by Buyer, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay shall not exceed a period of time that Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Supplier does not provide adequate assurance that the delay will cease within the time period, Buyer may, among its other remedies, immediately cancel the Purchase Order and seek damages against Supplier for nonperformance.

19.3 Duty Drawback Rights. The Purchase Order includes all related customs duty and import drawback rights, if any, which Supplier can transfer to Buyer, including rights developed by substitution and rights which may be acquired from Supplier's suppliers. Supplier agrees to inform Buyer of the existence of any such rights and upon request shall supply documents as may be required to obtain the drawback.



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19.4 Limitation on Buyer's Liability/Waiver. In no event shall Buyer be liable to Supplier for anticipated profits or for incidental or consequential damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from these Terms and Conditions, or from any performance or breach, shall in no case exceed the price allocable to the Supplied Goods giving rise to the claim. No action or inaction by Buyer to enforce the Terms and Conditions shall constitute a waiver of compliance with any of the provisions in these Terms and Conditions.

19.5 Relationship of Parties. Supplier and Buyer are independent contracting parties and nothing in these Terms and Conditions shall make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

19.6 Remedies and Injunctive Relief. The rights and remedies to Buyer in these Terms and Conditions are cumulative with, and in addition to all other and further remedies provided in law or equity. To the extent that these Terms and Conditions are for Supplied Goods for use as, or fabrication into, parts, components or systems, Supplier acknowledges and agrees that money damages would not be sufficient remedy for any actual, anticipatory or threatened breach of these Terms and Conditions by Supplier and that, in addition to all other rights and remedies which Buyer may have, Buyer shall be entitled to specific performance and injunctive or other equitable relief.

19.7 Customs-Trade Partnership Against Terrorism. To the extent that any Supplied Goods covered by these Terms and Conditions is to be imported into the United States of America, Supplier shall comply with all applicable recommendations or requirements of the Bureau of Customs and Border Protection's Customer-Trade Partnership Against Terrorism ("C-TPAT") initiative. Upon request, Supplier shall certify in writing its compliance with the C-TPAT initiative.

19.8 Continuing Obligations. The obligations of Supplier under Sections 2.8, 5.4, 5.5, 7.4, 19.4, 19.6, 19.8 and Articles 4 and 12 through 15, shall survive the expiration, nonrenewal or termination of any Purchase Order.

19.9 Amendment. These Terms and Conditions may not be varied or modified in any manner, without the prior written consent of both parties.

19.10 Entire Agreement. A Purchase Order and these Terms and Conditions shall constitute the entire agreement between the parties with respect to its subject matter, and shall supersede all prior and contemporaneous agreements, representations, and understandings of the parties with respect to its subject matter.

19.11 Severability. In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation with invalidating any other provision hereof.