

Timpte, Inc.
Purchase Order Terms and Conditions

Date 4/19/2011

1. Definitions – The following definitions shall apply to this Order except as otherwise herein provided.

“Buyer” – the legal entity issuing this Order

“Contract” – this contractual instrument, including changes

“Purchasing Representative” – Buyer’s authorized representative

“Seller” – the legal entity which contracts with the Buyer

“Subcontractor” – the Seller’s subcontractors

“This Order” – this contractual instrument, including changes

2. ACCEPTANCE OF PURCHASE ORDER – Buyer and Seller shall be bound by this order when Seller: (a) executes and returns the acknowledgment; (b) commences work pursuant to this order and notifies Buyer; or (c) delivers to Buyer any one of the items ordered. No term or condition of this order may be added to, modified, superseded, or altered except by a written instrument signed by an authorized Purchasing Representative of Buyer and delivered by Buyer to Seller. Except as this order is so changed, each item or service received, accepted and/or paid for by Buyer shall be only upon the terms and conditions in this order notwithstanding any restriction, term or condition of Seller in acknowledging this order or which may be contained in any form letter or other communication of Seller relating to this order before, after or concurrently with Seller’s acknowledgment.

3. PACKING AND SHIPPING

(a) Seller shall ship only as specified herein, or as subsequently directed in writing

(b) Seller shall pack or otherwise prepare all goods to meet carrier requirements and safeguard against damage from weather and transportation;

(c) No charges shall be allowed for packing or cartons unless specifically noted herein;

(d) Unless otherwise agreed upon in writing by Buyer, goods must be shipped prepaid at Seller’s expense; and

(e) Each package shall be marked to show Purchase Order number and include a packing sheet in each package.

4. PUBLIC RELEASES – Except as required by law or regulation, no news releases, public announcement or advertising material concerned with this order shall be issued by Seller without prior written consent of Buyer. Seller shall extend this restriction to lower-tier subcontractors involved in the performance of this order.

5. DELIVERY AND RISK OF LOSS - Buyer’s production schedules and warranties to its customers are dependent upon the agreement that deliveries of the goods covered by this Purchase Order will occur on the required delivery dates shown on the face hereof. Therefore, time is of the essence. Seller shall be responsible for all damages of any kind incurred or suffered by Buyer which were caused by any delay of Seller in making deliveries of acceptable supplies. Seller agrees to notify Buyer immediately if at any time it appears that Seller may not meet the delivery schedule. Such notification shall include the reasons for the delay, actual or

potential, the steps being taken to remedy the constraint and the schedule or a proposed waiver of the delivery schedule in the Purchase Order. Any assistance furnished by Buyer to overcome delays shall not be regarded as waiving Buyer's remedies for default, including termination rights, if Seller fails to meet the contractual schedule. Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Seller's expense. Identification of the goods under Section 2-501 of the Uniform Commercial Code shall occur at the moment Seller accepts this Purchase Order. Seller shall not be excused from performing its obligations hereunder if the goods identified are destroyed. Delivery shall not be deemed complete until the goods have been actually received by Buyer at its facility. The risk of loss and damage in transit shall be upon Seller and shall not pass to Buyer until received at Buyer's facility in a condition in accordance with the terms of this Purchase Order. The cost of all return shipments shall be borne by Seller.

6. WAIVER – The failure of Buyer in any one or more instances to enforce any of its rights or to insist upon performance of any of the terms or conditions of this Purchase Order, or failure of the Seller to perform any provision of the order, shall not be construed as waiving any of the terms and conditions of this Purchase Order or any of Buyer's rights or remedies.

7. CHOICE OF LAW – Irrespective of the place of performance, this order will be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi judicial agencies of the federal government. To the extent that the federal common law of government contract is not dispositive, the governing laws of the State of Colorado shall apply without regard to its choice of law provisions.

8. WARRANTIES – ALL WARRANTIES OF SELLER, EXPRESS OR IMPLIED, WHETHER CREATED EXPRESSLY BY LAW OR IN FACT, ARE INCORPORATED HEREIN BY REFERENCE AND SHALL INCLUDE, AND ARE SUPPLEMENTED BY, THE FOLLOWING EXPRESS WARRANTIES:

(A) THE GOODS SHALL COMPLY WITH ANY AND ALL SPECIFICATIONS, DRAWINGS, SAMPLES, OR OTHER DESCRIPTIONS FURNISHED BY BUYER;

(B) THE GOODS SHALL BE MERCHANTABLE, OF GOOD MATERIAL AND WORKMANSHIP, FREE FROM DEFECT, AND SUITABLE FOR THEIR INTENDED PURPOSE;

(C) EXCEPT IN THE CASE OF GOODS FOR WHICH BUYER FURNISHES DETAILED MANUFACTURING DRAWINGS, THE MANUFACTURE AND SALE BY SELLER OF THE GOODS, THE USE, RESALE, INSTALLATION, AND USE OF THE GOODS BY BUYER, AND DISCLOSURES BY SELLER TO BUYER IN ANY MANNER SHALL NOT INFRINGE UPON OR VIOLATE THE LEGAL OR EQUITABLE RIGHTS OF ANY PERSON, CORPORATION OR OTHER ENTITY ARISING OUT OF ANY LICENSE OR FRANCHISE, OR OUT OF ANY PATENT, TRADEMARK, OR OTHER PROPRIETARY RIGHT OR TRADE SECRET, NOW OR HEREAFTER IN EFFECT. ALL OBLIGATIONS OF SELLER HEREUNDER SHALL SURVIVE ACCEPTANCE OF AND PAYMENT FOR

THE GOODS. SELLER SHALL INDEMNIFY AND HOLD HARMLESS BUYER FROM AND AGAINST ALL LIABILITY, LOSS, CONSEQUENTIAL, PUNITIVE AND INCIDENTAL DAMAGES, AND EXPENSES, INCLUDING ATTORNEY FEES AND COSTS, RESULTING FROM THE BREACH OF ANY WARRANTY OR RESULTING FROM ANY OTHER ACT OR OMISSION BY SELLER, ITS AGENTS OR EMPLOYEES, WHILE IN THE PERFORMANCE HEREOF.

9. ACCEPTANCE – Payment for any goods under this order shall not constitute acceptance thereof. All goods hereunder are subject to inspection at Buyer destination either before or after payment or before or after acceptance, at Buyer's option. Buyer reserves the right to reject and refuse acceptance of goods which are not in accordance with the instructions, specifications, drawings, and data or Seller warranties (expressed or implied.) Goods not accepted will be returned to Seller for full credit or replacement at Buyer's option and at Seller's risk and expense, including transportation charges both ways. No replacement of rejected goods shall be made unless specified by Buyer in writing. Acceptance of all or any part of the goods shall not be deemed to be a waiver of Buyer's right either to cancel or return all or any portion of the goods because of failure to conform to this order, or by reason of defect, patent or latent, or other breach of warranty, or to make claim for damages, including manufacturing costs, damage to material or articles caused by improper boxing, crating, or packing, and loss of profits or other special damages incurred by the Buyer. Such rights shall be in addition to any other remedies provided by law.

10. INSPECTION – Buyer reserves the right to inspect all goods prior to shipment by Seller, and in furtherance thereof, Seller shall permit employees or representatives of Buyer and Buyer's customer to have access to Seller's facilities at all reasonable hours. All goods shall nevertheless be received subject to final inspection and approval or rejection by Buyer after delivery at destination, notwithstanding payment, passage of title, or prior inspection or test of items at Seller's facility. Buyer's inspection, or its lack of inspection, shall not affect any express or implied warranties. If the face of this Purchase Order stipulates that, the goods shall be subject to inspection at Seller's facilities. Seller shall provide reasonable space and assistance for the safety and convenience of representatives of Buyer and its customer. At the time of inspection, Seller shall make available to such representatives copies of all drawings, specifications and other technical data applicable to the goods ordered.

11. DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION – Drawings, data designs, inventions, and other technical information supplied by Buyer shall remain Buyer's property and shall be held in confidence by Seller. Such information shall not be reproduced, used and/or disclosed to others by Seller without Buyer's prior written consent and shall be returned to Buyer upon completion of this Purchase Order or upon demand. Any information which Seller may disclose covered by this Purchase Order shall be deemed to have been disclosed, as part of the consideration of this Purchase Order and Seller shall not assert a claim (other than a claim for patent infringement) against the Buyer by reason of Buyer's use thereof. Seller, if required as part of its performance hereunder, shall, on or before delivery of any goods, supply any and all printed materials, such as catalogs, drawings, cuts, certified prints, characteristic curves, parts lists, service and technical manuals, and diagrams relating to such goods. The failure of Seller to deliver the foregoing printed material shall constitute a basis for

nonpayment of the price of the goods until delivery is made. All such printed materials supplied by, or specifically prepared at the request of Buyer, shall at all times be and remains the property of Buyer and shall be delivered to Buyer on demand.

12. PATENT INDEMNITY – The Seller agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer, or any of its subsidiaries, constituent companies, agents, customers or vendors, hereinafter for the purpose of this section collectively referred to as the “Buyer”, for alleged infringement of any U.S. or foreign patent, copyright or trademark, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods, by reason of the use or sale of any goods or processes furnished by the Seller, except for goods manufactured or processes developed entirely to Buyer’s specifications. The Seller further agrees to indemnify Buyer against any and all losses and damages, including court costs and attorney’s fees, resulting from the bringing of such suit or proceeding, including any settlement, decree of judgment entered therein. The Buyer may be represented by and actively participate through its own counsel at Seller's expense in any such suit or proceeding, if it so desires. The Seller’s obligation hereunder shall survive acceptance of the goods or processes and payment therefor by the Buyer.

13. PATENT AND PROPRIETARY RIGHTS – All technical information in the nature of designs, blueprints, specifications, engineering data for production or production know-how which is supplied to the Seller by the Buyer to facilitate or assist in the performance of this order shall, unless otherwise agreed, be considered and kept confidential by the Seller, and the Seller will use and cause its employees and agents to use extreme caution not to disclose any such information either directly or by incorporation in, or its use in manufacturing, products for others. Additionally, Seller agrees to assign to the Buyer and not otherwise to make use of any invention, improvement or discovery (whether or not patentable) conceived or reduced to practice in the performance of this order by any employee of the Seller or other person working under Seller’s direction, and such assignment shall be considered as additional consideration for the making of this order. The Seller shall deliver to the Buyer any and all information relating to any such invention, improvement or discovery, and shall cause employees or others subject to Seller’s instructions to sign as appropriate all documents necessary or convenient to enable the Buyer to file applications for patents throughout the world and to obtain title thereto.

14. INTELLECTUAL PROPERTY – (Subparagraph (a) is NOT applicable for commercial off-the-shelf purchases unless such off-the-shelf product is modified or redesigned pursuant to this Purchase Order.)

(a) Seller agrees that Buyer shall be the owner of all technology, designs, works of authorship, inventions, technology, designs, computer software, software documentation, mask works, technical information, business information, and other information conceived, developed, or otherwise generated in the performance of this Purchase Order by or on behalf of Seller. Seller assigns and agrees to assign all right, title, and interest in the foregoing to Buyer, including without limitation all copyrights, patent rights, and other intellectual property rights and further agrees to execute, at Buyer’s request and expense, all documentation necessary to perfect title in Buyer. Seller agrees that it will maintain and disclose to Buyer written records of, and otherwise

provide Buyer with full access to, the subject matter covered by this clause and that all such subject matter will be deemed confidential information of Buyer and subject to the protection provisions of the clauses entitled “Drawings, Specifications and Technical Information: and “Patent and Proprietary Rights” in the Purchase Order. Seller agrees to assist Buyer, at Buyer’s request and expense, in every reasonable way, in obtaining, maintaining and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

(b) Seller warrants that the work performed and delivered under this Purchase Order will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Seller agrees to act in accordance with the “Patent Indemnity” clause of the Purchase Order to defend, indemnify, and hold harmless Buyer and its subsidiaries, constituent companies, agents, customers or vendors against any third party claims brought regarding work performed and delivered under this order.

15. BUYER-OWNED MATERIALS

(a) All materials, tools, designs, dies, fixtures, drawings, specifications and other property, method or processes owned or paid for or agreed to be paid for by Buyer, whether directly noted on the face of this order or included by Seller in unit price of goods, shall be property of Buyer subject to removal at any time without cause or expense to Buyer. All such materials, etc. shall be identified and marked by Seller as Buyer property, used only for Buyer orders, unless otherwise authorized by Buyer, treated as confidential material and covered by Seller, at Seller expense, by adequate liability, damage, and fire insurance for the replacement cost thereof. Seller shall assume all risk of loss or damage to such property, maintain and repair the same, and return or turn over the same to Buyer in good condition, reasonable wear and tear excepted, upon the completion, cancellation, or termination of this order, Where any part or product is specifically manufactured or procured for the purpose of this order, whether of the design of Seller, Buyer, or a third party, such part or product cannot be sold by the Seller to any third party without written consent of the Buyer. Seller shall direct any question pertaining to control of Buyer property to the Buyer.

(b) Unless otherwise provided herein, all property furnished to Seller by Buyer shall remain the property of Buyer. Seller shall bear risk of all loss and damage thereto, while such property is in Seller’s actual or constructive possession. Such property shall at all times be properly protected and maintained by Seller, shall not be commingled with the property of Seller or others, shall not be moved from Seller’s premises without prior written authority from Buyer, and shall, upon request by Buyer, be immediately returned to Buyer at Seller’s expense. Further, such property shall be identified and marked by Seller as Buyer’s property and shall be used only as expressly authorized by Buyer. Such property shall be adequately insured by Seller for any and all losses while in Seller’s possession, and shall be returned to Buyer in the same condition as when received by Seller, reasonable wear and tear excepted.

16. REPRODUCTION, USE AND DISCLOSURE OF DATA

(a) The Seller agrees to and does hereby grant to Buyer the right to reproduce, use and dispose of all or any part of the reports, drawings, blueprints, data, and technical information to be provided to Buyer pursuant to this order, and Seller agrees to hold harmless Buyer and its assigns from

any liability arising out of said reproduction, use, or disposition. Buyer shall give Seller prompt notice in writing of any suit or action alleging such liability.

(b) If the terms, or parts thereof, contracted for hereunder are designed by Buyer, the Seller shall not reproduce any of such items or parts without Buyer's written consent, nor without such written consent supply or disclose any information regarding such items or any equipment or materials used therein, nor incorporate in other products or items any special features of design or manufacture peculiar to the items contracted for hereunder.

(c) No information or knowledge disclosed to Buyer in the performance of or in connection with this Purchase Order shall be deemed confidential or proprietary unless otherwise expressly agreed to in writing by Buyer, and any such information or knowledge shall be free from any restrictions, other than patents, as part of the consideration for this Purchase Order.

17. SUBCONTRACTS Seller agrees that no subcontract placed in support of this Purchase Order shall provide for payment on a cost-plus-a-percentage-of-cost basis.

18. CHANGES

(a) Buyer may at any time, by a written change order issued by an authorized Purchasing Representative, extend the time of delivery, or make changes within the general scope of this order in any one or more of the following (i) drawings, designs, or specifications, (ii) method of shipment or packing, and (iii) place of delivery. If a change order, issued hereunder, causes an increase or decrease in the cost of performance or in the time required for performance, an equitable adjustment shall be made in the order price and/or delivery schedule and the order shall be modified in writing accordingly. Any claim for adjustment under this clause shall be deemed waived unless asserted within twenty (20) days from the date of receipt by the Seller of the change order, provided, however, that Buyer if it decides that the facts justify such action, may receive and act upon such claim submitted at any time prior to final payment under this order. Any such claim must set forth the amount of any increase or decrease in the cost of performance resulting from the change in the format and the items to be produced by Seller shall be manufactured in accordance with this order and such changes thereto subsequently authorized by a written change order issued by said authorized Purchasing Representative of Buyer. Failure to agree upon an equitable adjustment shall not relieve the Seller from proceeding without any delay in performance under this Purchase Order as changed. Nothing in this clause shall excuse the Seller from proceeding with the order as changed.

(b) Buyer's engineering and technical personnel may from time to time render assistance or give technical advice to or affect an exchange of information with Seller's personnel in a liaison effort concerning the items to be furnished hereunder. However, such exchange of information or advice shall not vest Seller with the authority to change the items hereunder or the provisions of the order nor shall any resulting change in items or provisions of the order be binding upon Buyer unless incorporated as a change in accordance with paragraph (a) above.

(c) Where the cost of property made obsolete or excess as a result of a change order is included in the Seller's claim for adjustment pursuant to this clause, Buyer shall have the right to prescribe the manner of disposition of such property.

19. INDEPENDENT CONTRACTOR

(a) Status as an Independent Contractor – Seller acknowledges and agrees that Seller is acting under this Purchase Order solely as an independent contractor, and not as an employee of the Buyer, and shall have no authority to act for or bind or obligate the Buyer in any manner except to the extent specifically authorized in writing by the Buyer. Seller acknowledges that Seller is solely responsible for determining the manner and means of its performance hereunder.

Accordingly, nothing herein contained shall be construed as creating the relationship of employer and employee between the Buyer and the Seller. No agency relationship is created between the Buyer and the Seller by this Purchase Order and Seller is not an agent of the Buyer, and shall not execute any documents on behalf of the Buyer. Seller shall not utilize Buyer's letterhead, business card, or Buyer's trademarks.

(b) Ineligible for Employee Benefits – Seller shall not be eligible for any benefit available only to employees of the Buyer, including, but not limited to, workers compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, savings plans and the like.

(c) Payroll Taxes – No income, social security, state disability or other such federal or state payroll tax will be deducted from payments made to Seller under this Purchase Order. Seller agrees to pay all state and federal taxes and other such levies and charges as they become due on account of monies paid to Seller hereunder, and to defend, indemnify and hold Buyer harmless from and against all liability resulting from any failure to do so.

20. PRICE AND TAXES – Buyer shall not be billed at prices higher than stated on this order unless authorized by a change order or notice issued and signed by an authorized Purchasing Representative of Buyer. Seller represents that the price charged for the items or services covered by this order is the lowest price charged by the Seller to buyers of items or services specified in this order and that prices comply with applicable Government regulations in effect at time of quotation, sale, or delivery. Seller agrees that any price reduction made for items covered by this order subsequent to the placement of this order will be applicable to this order. Except as otherwise specified herein, or unless prohibited by law, Seller shall pay all sales, use, excise, or other taxes, federal, state, and local, that may be levied upon any of the goods, or the parties hereto, by reason of the sale, delivery or use of the goods. All taxes of any nature, which are billed to Buyer, shall be specifically identified and separately stated. If any tax or portion thereof, which is included or added to the price paid to Seller, is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund. Buyer will send Seller appropriate resale certificates in connection with the purchase of items used in the manufacturing process and not intended to be subject to sales taxes.

21. PAYMENTS

(a) Payments shall be made upon the submission of proper invoices for goods delivered and accepted. With respect to any discount offered, time shall be computed from the date of delivery or from the date correct invoice is received by Buyer, whichever last occurs. Payment is deemed to be made, for the purpose of earning the discount, on the date Buyer's check is mailed.

(b) Seller shall certify, at the time of submitting invoices, that all goods and services were manufactured or performed in compliance with the Fair Labor Standard Act.

22. EFFECT OF INVALIDITY –The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.

23. REMEDIES - The remedies herein reserved shall be cumulative and in addition to any other or further remedies provided by law or equity. The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such item, covenant, or condition or the future exercise of such right, and the obligation of Seller with respect to such future performance shall continue in full force and effect.

24. COMPLIANCE WITH LAW – In performance of the work and shipment of goods covered by this order, Seller agrees to comply (and to bear all expense required for compliance) with the Fair Labor Standards Act of 1938, as amended, and regulations thereunder, all applicable provisions of the Walsh-Healy Act, the Buy American Act, the Occupational Safety and Health Act, the Equal Employment Act of 1972, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the National Environmental Policy Act of 1969, Title III of the Superfund Amendment and Reauthorization Act, the provisions of the Occupational Safety and Health Act of 1970 relating to the handling of or the exposure of hazardous materials and similar substances and regulations thereunder, and all other applicable federal, state and local laws, rules, regulations, and orders, and agrees to indemnify Buyer against any loss, cost, liability, or damage whatsoever, including attorney’s fees, which may result from Seller’s violation of this paragraph.

25. DISPUTE – Any dispute arising under this order which is not settled by agreement of the parties may be settled by appropriate legal proceedings including arbitration. The exclusive venue for any litigation or arbitration arising out of or related to this Agreement will be Denver, Colorado. Pending any decision, appeal, or judgment in such proceedings, or the settlement of any dispute arising under this order, Seller shall proceed diligently with the performance of this order in accordance with the decision and instruction of Buyer.

26. FALSE CLAIMS AND INDEMNITY – The Seller shall indemnify the Buyer for any cost incurred and any payment made by Buyer or any reduction in Buyer’s contract price resulting from false claims submitted by the Seller under this order or as a result of (i) Failure to comply with any applicable Cost Accounting Standards under the FAR, (ii) Seller’s failure to submit current, complete, and accurate cost of pricing data when required, (iii) Seller’s misrepresentation of any fact or Seller’s fraud under appeals made by the Buyer or Seller under article 25, above, entitled “DISPUTE”. The Buyer shall notify the Seller in writing of any allegations of a false claim, misrepresentation of fact, or fraud to which this indemnity applies.

27. INSURANCE – If this order provides for work to be performed by Seller on property owned and controlled by Buyer or on property of others, Seller shall insure each of its employees engaged upon the work with worker’s compensation and employer’s liability insurance and shall procure and maintain, at its cost and expense and until final acceptance of the work by Buyer, public liability insurance from a reputable and financially responsible insurance company, properly safeguarding Buyer against liability for injuries to persons, including injuries resulting in death, in amount acceptable to Buyer. Seller shall furnish to Buyer written certificates from insurance carriers or from appropriate governmental authorities establishing that said insurance of employees and said public liability insurance have been procured and are being properly maintained and the premiums are paid, and the respective policy numbers and expiration dates. All such insurance policies shall provide (unless by statute applicable thereto it is otherwise provided) that in the event of cancellation thereof, written notice of each cancellation shall be given to Buyer at least thirty (30) days prior to the effective date of such cancellation.

28. INDEMNIFICATION – If Seller’s agents, employees, or subcontractors enter upon premises occupied by or under the control of Buyer, Seller shall indemnify and hold Buyer harmless against all liabilities, losses, damages, and expenses, including attorney’s fees, for personal injuries, death, or property damage except in those instances where such liability, losses, damages or expenses are due solely and directly to Buyer’s gross negligence.

29. TERMINATION FOR CONVENIENCE – The Buyer may terminate performance or work under this order in whole or in part by written notice of termination, whereupon the Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work. Seller will promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that the Seller can make thereof. Seller will comply with the Buyer’s instructions regarding transfer and disposition of title to the possession of such work and material. Within sixty (60) days after receipt of such notice of termination, the Seller will submit all its claims resulting from such termination. Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing the records, facilities, and work on materials of the Seller relating to this order. Buyer will pay the Seller, without duplication, the order price for finished work accepted by the Buyer and the cost to the Seller of work in process and raw material allocated to the terminated work, based on any audit the Buyer may conduct under generally reasonable value or cost (whichever is higher) of any items used or sold by the Seller without the Buyer’s consent, less (a) the agreed value of any items used or sold by the Seller with the Buyer’s consent, and (b) the cost of any defective, damaged, or destroyed work or material. Buyer will make no payment for finished work, work in process or raw material fabricated or procured by the Seller in excess of any order or release. Notwithstanding the above payments made under this clause shall not exceed the aggregate price specified in this order less payments otherwise made or to be made, and adjustments shall be made reducing the payments hereunder for costs of work in process and raw material to reflect on a pro rata basis any indicated loss on the entire order had it been completed. Payment made under this clause constitutes the Buyer’s only liability in the event this order is terminated hereunder.

30. DEFAULT

(a) (1) The Buyer may, subject to paragraphs (c) and (d), below, by written notice to Seller, terminate this order in whole or in part if the Seller fails to: (i) deliver the supplies or to perform the services within the time specified in this order or any extension; (ii) make progress so as to endanger performance of this order (but see paragraph (a)(2), below; or (iii) perform any of the other provisions of this order (but see paragraph (a)(2) below). (2) The Buyer's right to terminate this order under subdivisions (1)(a)(ii) and (1)(a)(iii), above, may be exercised if Seller does not cure such failure within 10 days (or more if authorized in writing by Purchasing Representative of the Buyer) after receipt of the notice from the Purchasing Representative of the Buyer specifying the failure.

(b) If the Buyer terminates this order in whole or in part, it may acquire, under the terms and in the manner the Purchasing Representative of the Buyer considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to the Buyer for any excess costs for those supplies or services above the costs specified in this order. However, the Seller shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Seller shall not be held in default if the failure to perform the order arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the U.S. or any state or local Government in its sovereign capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Seller.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Seller to meet required delivery schedule.

(e) If this order is terminated for default, the Buyer may require the Seller to transfer title and deliver to the Buyer, as directed by the Purchasing Representative of the Buyer, any (1) completed supplies, and (2) partially complete supplies and materials, part, tools, dies, fixtures, plans, drawing, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this order. Upon direction of the Purchasing Representative of the Buyer, the Seller shall also protect and preserve property in its possession in which Buyer has an interest.

(f) The Buyer shall pay the order price for completed supplies delivered and accepted. The Seller and Purchasing Representative of the Buyer shall agree on the amount of payment for the manufacturing materials delivered and accepted and for the protection and preservation of the property. The Buyer may withhold from these amounts any sum, which the Purchasing Representative of the Buyer determines to be necessary to protect the Buyer against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Buyer.

(h) The rights and remedies of the Buyer in this clause are in addition to any other rights and remedies provided by law or under this order.

31. BANKRUPTCY – In the event that the Seller shall seek protection in bankruptcy, be adjudicated a bankrupt, make a general assignment for the benefit of creditors, or consent to any proceeding under any reorganization or other law relating to the relief of debtors, or in the event or a receiver appointed to take custody and control of all or any part of the property or assets of Seller, then Buyer may, at its option, cancel this order.

32. TITLE TO GOODS – It is agreed between Buyer and Seller that title to the goods and materials purchased hereunder shall pass to the Buyer at the F.O.B. point shown on the face of this Purchase Order and that Seller's delivery commitment is due date at the F.O.B. point.

33. SELLER QUOTATIONS – Reference in this order to Seller quotation does not imply acceptance of any terms and conditions in such quotation. Any terms and conditions in such quotation which are in addition to, or inconsistent with, the terms and conditions contained in this order are excluded.

34. NOTICE TO THE BUYER AND LABOR DISPUTES – Whenever Seller had knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Seller shall include this section in each lower sub-tier Subcontract placed in support of this order.

35. INVOICES, STATEMENTS, AUDIT OF BOOKS – Unless otherwise provided in this Purchase Order, no invoice shall be issued and no payment will be made prior to physical delivery of goods, or completion of services. Individual invoices, showing the Purchase Order number, description of goods, number of cartons shipped, and carrier and weight, shall be issued for each shipment applying hereto. One copy of each individual invoice must be plainly marked "ORIGINAL". Shipping charges and all applicable taxes, or charges for which Buyer has agreed to pay, and has not furnished an exemption certificate, shall be itemized separately on Seller's invoices. Unless such charges are itemized, Buyer may take the applicable discount on the full amount of each invoice. Seller agrees that its books and records, or such parts thereof as may relate to the performance hereunder, shall at all reasonable times be subject to inspection and audit by duly authorized representatives of Buyer.

36. ASSIGNMENT – The Seller shall not assign this order in whole or in part, and Seller shall not delegate any duties, nor assign any rights or claims hereunder, without prior written consent of Buyer, which Buyer may withhold in its sole discretion and any such attempted delegation or assignment shall be void. Any monies due or to become due hereunder may be assigned provided that such assignment shall not be binding upon Buyer until receipt of a copy of the assignment agreement is acknowledged and approved by the Buyer in writing. All claims for

monies due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other of Buyer's Purchase Orders with Seller, whether such setoff or counterclaim arises before or after any such assignment by Seller.

37. ANTI-KICKBACK ACT – The giving or receiving of kickbacks is absolutely prohibited. Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given any gratuities to Buyer's employees, agents, or representatives for the purpose of securing favorable treatment under this contract.

38. SETOFF PROVISION – Amounts due from Seller to Buyer on other orders may be set off against the amounts owed on this Purchase Order.

39. PRECEDENCE – In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this order, the following order of precedence shall apply: (i) special terms and conditions, (ii) the standard terms and conditions contained in this form, (iii) specifications, and (iv) all other attachments incorporated herein by reference. Buyer's specifications shall prevail over any subsidiary documents referenced therein. Seller shall not use any specification in lieu of those contained in this contract without written consent of Buyer's authorized Purchasing Representative.

40. ENTIRE AGREEMENT – The provisions contained herein constitute the entire agreement between the parties and supersede all previous communications and representation either oral or in writing with respect to the subject hereof. If any provision of this order is or becomes void or unenforceable by force of law, the remainder shall remain valid and enforceable.