

# OMNOVA SOLUTIONS INC.

## PURCHASE ORDER TERMS AND CONDITIONS.

### 1. General Terms and Conditions.

All purchases of goods or services by OMNOVA Solutions Inc., or any affiliate, ("Buyer") shall be governed exclusively by the purchase order documents issued by Buyer, (including specifications and instructions referred to therein and any release issued thereafter), and these Purchase Order Terms and Conditions, (collectively, a "Purchase Order").

Any acknowledgement of a Purchase Order or commencement of performance under a Purchase Order by any seller of goods or services ("Seller") shall constitute Seller's acceptance of all of the terms and conditions of a Purchase Order. Any acceptance by Seller of a Purchase Order is expressly limited to the Purchase Order terms and conditions.

Buyer objects to and rejects any additional or inconsistent terms and conditions offered by Seller at any time and irrespective of (i) Buyer's acceptance of or payment for Seller's goods and services, (ii) any purchase order, confirmation, invoice, acknowledgement, release or acceptance issued by Seller, or (iii) any other conduct by Buyer.

If a Purchase Order is identified by Buyer as a blanket order, such Purchase Order will cover such portion of Buyer's requirements for the goods and/or services as Buyer may elect to purchase, from time to time, from Seller. Unless otherwise expressly provided by such Purchase Order, Buyer will be under no obligation to purchase goods or services from Seller until an authorized representative of Buyer makes a written request to Seller to provide such goods or services.

### 2. Delivery.

Time, quantity, and accuracy of deliveries are of the essence. Seller shall immediately notify Buyer in the event that Seller's timely performance under a Purchase Order is delayed or likely to be delayed, in whole or in part, and Seller shall provide Buyer with all available information regarding the reasons for such delay. Such notice shall not constitute a waiver by Buyer of any of Seller's obligations hereunder. If delivery of goods or rendering of services is not completed by the time, at the location and in the quantities required by the Purchase Order, Buyer reserves the right, without liability and in addition to its other rights and remedies: (a) to terminate the Purchase Order by written notice effective when received by Seller as to stated goods not yet shipped or services not yet rendered; (b) to expedite shipments at the sole cost and expense of Seller; and (c) to purchase substitute goods or services elsewhere and charge Seller with any difference between the cost of the goods or services as set forth in the Purchase Order and the cost of obtaining the substitute goods or services.

Seller shall not deliver any goods or services in advance of the schedule set forth in the Purchase Order without Buyer's written permission. Buyer reserves the right to return, at Seller's expense, all goods received by Buyer in advance of the schedule shown in the Purchase Order.

The title and risk in the goods shall remain with Seller until the goods are delivered to the location specified in the Purchase Order and a delivery receipt is signed by an authorized representative of Buyer, at which time title and risk in the goods shall transfer to Buyer.

### 3. Packaging and Shipment.

Seller agrees to (a) properly pack, identify, label, and ship goods in accordance with the requirements of Buyer; (b) make only those charges for handling, packaging, storage or transportation of goods as expressly permitted by the relevant Purchase Order; and (c) promptly forward the full set of original copies of bills of lading and/or other shipping documents for each shipment to Buyer in accordance with Buyer's instructions. Such bills of lading or shipping documents shall include correct classification and identification of the goods shipped in accordance with the applicable carrier's and/or governmental requirements, as well as Buyer's packaging and shipping instructions.

Seller shall be liable for any additional cost incurred by Buyer and for any loss or damage to the goods resulting from failure to comply with Buyer's packaging and shipping instructions.

Prepaid transportation charges on Seller's invoice must be supported by a paid freight bill or equivalent net of any rebate or similar item received or to be received by Seller.

#### **4. Price and Payment.**

Buyer shall not be obligated to pay and shall not be billed at prices higher than that stated on the Purchase Order unless authorized by a written purchase order change notice issued and signed by Buyer. Seller represents that the prices charged for the goods or services covered by the Purchase Order are equal to or lower than the lowest prices charged by Seller to any of Seller's other customers under conditions similar to those specified in the Purchase Order.

If a price is omitted from a Purchase Order, the goods or services will be billed at the lower of: (a) the price last quoted to Buyer; (b) the price last paid by Buyer; or (c) the prevailing market price. Unless otherwise specified, all prices are FOB the location set forth in the Purchase Order and include all charges for packaging, handling, storage and delivery. Seller will pay all delivery charges in excess of the delivery charges which Buyer has agreed in writing to pay.

If payment terms are not specified in the Purchase Order then all payments under the Purchase Order to Seller shall be paid to Seller in United States dollars not later than sixty (60) days following the later of: (i) the delivery date; (ii) the date of Buyer's acceptance of all of the products and/or services under the Purchase Order; or (iii) Buyer's receipt of a properly prepared invoice.

Seller shall pay, without charge to Buyer, any federal, state or local tax or other government charge or assessment relating to the production, sale or shipment of any of the goods or services. Any value added tax shall be shown separately on all invoices.

If Buyer is offered goods or services of equal quality and in quantities equal to or less than those remaining for delivery at a delivered cost lower than that then in effect under the Purchase Order, and gives Seller notice thereof, Seller shall either reduce its price to such lower delivered cost within 10 days after its receipt of such notice or permit the Buyer to purchase elsewhere at such lower price while it remains effective. The quantity so purchased shall be deducted from the undelivered portion of the Purchase Order.

If, at any time during the term of Seller's performance under this Purchase Order, Seller should sell to any other customer goods or services of at least equal quality at a price lower than that in effect hereunder, Buyer shall receive the benefit of the lower price on all deliveries of product which are made during the period when such lower price is in effect.

In the event of any violation by the Seller of any provision of the Purchase Order, or in the event of the assertion by any third parties of any claim or lien against Buyer or its property arising out of Seller's performance under the Purchase Order, Buyer shall have the right to retain out of any payments due to Seller or that become due to Seller an amount sufficient to protect Buyer completely from any loss, damage or expense therefore, until the situation has been satisfactorily remedied by Seller.

#### **5. Warranty.**

Seller represents and warrants to Buyer and to Buyer's customers that all goods supplied under the Purchase Order (including all replacement items) will be free from defects in materials and workmanship; will conform to all applicable specifications; will be merchantable; be suitable for the intended purposes; and be free from all other defects whether patent or latent.

Seller represents and warrants to Buyer that all services provided shall be free from defects in workmanship and will be furnished by qualified professionals in accordance with the highest industry standards.

Buyer's approval of Seller's samples or first articles shall not be construed as a waiver by Buyer of any requirements of the specifications, samples, and/or other applicable descriptions or of any expressed or implied warranty.

In addition to any remedies available to Buyer at law or in equity, if requested by Buyer, Seller shall as soon as reasonably practicable repair or replace all goods or re-perform all services, without additional cost to Buyer, which are not in compliance with Seller's warranties.

The Seller represents and warranties provided for in the Purchase Order are in addition to and without prejudice to all other warranties, expressed or implied by law and otherwise, and shall

survive acceptance of and payment for the goods and services and shall run to Buyer, its customers and the users of its products which have incorporated the goods and/or services supplied by Seller to Buyer under the Purchase Order.

Seller shall qualify as, and maintain its status as, a qualified supplier in compliance with Buyer's supplier qualification requirements as in effect from time to time.

#### **6. Intellectual Property.**

Seller represents and warrants that the goods and services supplied to Buyer pursuant to the Purchase Order shall not infringe upon any third party's patent, industrial design, copyright, trade secret or any other intellectual property or proprietary rights. Seller further represents and warrants that it has the right through ownership or license, to offer for sale, to use and to sell the goods and services provided pursuant to the Purchase Order and that any such Seller rights extend to Buyer, its affiliates, and their customers with respect to such goods and services.

If the use or sale of any such goods or services is enjoined as a result of such infringement, Seller at no expense to Buyer, shall immediately obtain for Buyer and its affiliates and customers, the right to use and sell such goods or services or shall substitute an equivalent good or service acceptable to Buyer, and shall reimburse Buyer for any costs associated with the substitution.

#### **7 . Inspection and Rejection.**

Buyer reserves the right at any time to inspect and/or test goods and/or services. Such inspection and/or testing shall not imply any acceptance of the goods or services nor in any way relieve the Seller of any obligation or duty under the Purchase Order or otherwise impose any obligations on Buyer. Notwithstanding (a) payment, (b) transfer of title or (c) prior inspection or test, all goods and services delivered under the Purchase Order are subject to final inspection and acceptance or rejection.

Seller shall test the goods to ensure that the goods meet with the applicable specifications and acceptance criteria and Seller shall not ship any goods that do not conform thereto. Each shipment must be accompanied by Seller's completed Quality Control Inspection Report, Certificate of Analysis or similar documents requested by Buyer. Seller shall provide and maintain a test and inspection system acceptable to Buyer and in conformity with industry standards. Records of all testing work by Seller shall be kept complete and available to Buyer and its customers during the performance hereof and for three years after final payment by Buyer or for such longer period as may be specified.

Seller shall remain liable for the conformance to all Seller warranties of any goods or services even after the same have been assembled or incorporated to become part of the output of Buyer or its affiliates or customers. On tracing the cause of failure of the assembly or other finished goods, if Buyer finds that the failure comes from Seller's breach of warranty, Buyer may without limiting any other remedies: (a) reject and return the goods supplied at Seller's expense including transportation charges; (b) claim from Seller the extra cost incurred in reclaiming the other usable parts for further processing; or (c) if reclaiming the other parts is not technically feasible, or not economically justified, claim from Seller the whole cost incurred for scrapping the finished assembly or other finished goods.

To the extent Buyer rejects goods as non-conforming, the quantities under the Purchase Order will automatically be reduced unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced without a new agreement or schedule from Buyer. Non-conforming goods will be held by Buyer for disposition in accordance with Seller's instructions and at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the goods, without liability to Seller. Payment for non-conforming goods shall not constitute an acceptance thereof, limit or impair Buyer's rights to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.

At all reasonable times during the period of Seller's performance, including the period of manufacture, Buyer and its customers may enter any manufacturing plant, warehouse, or other premises under Seller's control to inspect and/or test the goods to be furnished hereunder and to inspect processes, tools, and materials used by Seller to perform hereunder.

## **8. Changes.**

Buyer may, at any time, by a written order, make changes in any one or more of the following: (a) designs or specifications, where the goods to be furnished are to be specially manufactured for Buyer in accordance with the Purchase Order; (b) method of shipment and packing; (c) place or time of inspection, delivery or acceptance; and (d) the amount of any Buyer furnished property.

If any of such changes causes an increase or decrease in the cost of and/or time required for performance of the Purchase Order, an equitable adjustment shall be made in the price or delivery schedule or both. No claim by Seller for adjustment shall be allowed unless made in writing to Buyer within ten (10) days from the date notice of any such change is received by Seller. If the cost of property rendered obsolete or excess as the result of a change is included in Seller's claim for adjustment, Buyer will have the right to take title thereto and prescribe the manner of disposition thereof. Nothing in this Section shall excuse Seller from proceeding with performance of the Purchase Order as changed. No price increase or extension of time for delivery shall be binding on Buyer unless evidenced by a purchase order change notice issued and signed by Buyer.

## **9. Nondisclosure of Information.**

Seller shall hold in strict confidence and not use for itself or any other person all information, specifications, data, processes, reports, or technical or business information submitted by or on behalf of Buyer to Seller pursuant to, or in connection with the Purchase Order (collectively, "Buyer Information"). Buyer shall retain title to all such Buyer Information and Seller shall, at Buyer's request or upon completion of this Purchase Order, return or deliver to Buyer all such Buyer Information. Seller shall not sell, or dispose of as scrap or otherwise, any completed or partially completed or defective goods embodying or comprising any Buyer's Information without Buyer's written consent. Buyer shall have the right to audit all of Seller's pertinent books and records in order to verify compliance with the Purchase Order.

Seller waives all claims regarding Buyer's use of all information, specifications, processes, reports, technical data or business information disclosed to Buyer in connection with the goods or services covered by the Purchase Order unless, prior to disclosure by Seller to Buyer, such items are the subject of a written confidentiality agreement signed by Buyer. Seller hereby assigns to Buyer all right, title and interest in and to all intellectual property rights (whether or not patentable), and including inventions, trade secrets, trademarks, copyrights and mask work rights in any goods created by Seller for Buyer under the Purchase Order. Supplier agrees to carry out all formalities to legally vest exclusive ownership of such intellectual property rights in Buyer at Buyer's expense and request.

Seller shall not disclose to third parties any information regarding Buyer or its business or its customers, including the existence and terms of any purchase order, or use such information itself for any purpose other than performing this order, without Buyer's written prior approval. Seller shall not use Buyer's name or any Buyer trademark in any advertising or publicity without Buyer's prior written approval.

## **10. Tooling and Buyer's Property.**

Unless otherwise specified in the Purchase Order, all tooling and/or all other property required for Seller's performance of the Purchase Order shall, be furnished by Seller, at Seller's expense, maintained in good condition by Seller, and replaced, modified or updated by Seller when necessary.

Title to all tooling and other property furnished to Seller by Buyer or paid for by Buyer, shall remain with Buyer. Seller shall not alter or use such tooling or other property for any purpose other than that specified by Buyer or for any other person without the prior written consent of Buyer. Seller shall not duplicate the tooling without prior consent from Buyer, for purposes not intended in the Purchase Order.

Buyer's tooling and other property shall be identifiably kept separate, apart from Seller's, and free of liens and encumbrances at Seller's sole cost and expense. Seller shall not move or relocate such tooling or other property outside the Seller production site designated by Buyer without written consent or instruction from Buyer. Seller shall keep adequate records with a description, location, and condition of such tooling and other property and such records shall be made available to Buyer upon request. Seller shall store, protect, preserve, repair and maintain such Buyer tooling and other property in accordance with sound industrial practice all at Seller's expense. In the event that

Buyer's tooling and other property become lost or damaged to any extent while in Seller's possession, Seller agrees to reimburse Buyer or replace such tooling and other property at Seller's expense.

Buyer may move such tooling or other property at any time at its discretion. At the completion or termination of the Purchase Order, Seller shall return such tooling and other property to the Buyer or request disposition instructions from Buyer.

## **11. Insurance.**

Seller shall maintain and require its agents and subcontractors, if any, to maintain in full force and effect throughout the entire term of the Purchase Order, insurance coverage in amounts acceptable to Buyer (and in no event less than a reasonable amount sufficient to satisfy Seller's defense and indemnification obligations hereunder), insuring: (1) Seller's, and/or Seller's agents' and subcontractors' liability to pay for any bodily injuries or death received or sustained by any person or persons, including employees of Seller, in any manner caused by, arising from, incident to, connected with or growing out of the work governed by this Purchase Order, (including, without limitation, the use of machinery, equipment or vehicles on Buyer's premises, and/or the condition of Buyer's land, buildings, facilities, machinery, equipment or vehicles), and (2) Seller's, and/or Seller's agents' and subcontractors' liability to pay for any and all loss, damage and injury to property in any manner caused by, arising from, incident to, connected with or growing out of the work governed by the Purchase Order, (including, without limitation, the use of machinery, equipment, or vehicles on Buyer's premises, and/or activities upon, or the condition of, Buyer's land, buildings, facilities, machinery, equipment, or vehicles) (collectively, the "Seller Insurance"). In the event such insurance is provided under a "claims made" form of policy, Seller shall ensure that the retroactive date of such policies predate the Purchase Order and that such coverage is continually maintained for a period of not less than five (5) years after the termination or expiration of the term of the Purchase Order, or any extensions hereto.

The Seller Insurance shall designate Buyer and Buyer affiliates as an additional insured and the insurance carrier shall promise to defend Buyer, Buyer affiliates and/or Buyer's agents and employees. The Seller Insurance shall contain a contractual liability clause providing coverage for liabilities arising under the Purchase Order which coverage shall provide a defense and coverage to Buyer and/or Buyer's agents and employees regardless of whether the alleged bodily injury, death, or property damage was caused or alleged to be caused in whole or in part by the conduct, fault or negligence of Buyer and/or Buyer's agents and employees.

Prior to the commencement of any work or services, Seller and all its agents and subcontractors, if any, shall furnish certificates of insurance satisfactory to Buyer (or if Buyer so directs, copies of the actual insurance policies) from each insurance carrier showing that the required insurance is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be cancelled or changed until the expiration of at least thirty (30) days after written notice of such cancellation or change has been mailed to and received by Buyer. All copies of policies and certificates of insurance submitted to Buyer shall be in form and content acceptable to Buyer.

In addition to its other remedies, Buyer may, at its sole option and without liability to Seller, suspend the work and/or exclude Seller from Buyer's premises until Seller furnishes satisfactory evidence of its full compliance with the provisions of the Purchase Order.

Seller's obligations in this Section shall be enforceable regardless of whether the indemnity provisions of the Purchase Order are enforceable. All Seller Insurance shall be endorsed whereby the insurer waives any and all rights of subrogation against Buyer, Buyer affiliates, agents, and employees. The obligation of Seller to provide the insurance hereinabove specified shall not limit in any way the liability or obligations assumed by Seller elsewhere in the Purchase Order.

## **12. Termination / Cancellation.**

Buyer may, at any time, terminate the Purchase Order in whole or in part by written or verbal notice to Seller. If the Purchase Order is terminated by Buyer for convenience, any claim of Seller shall be settled on the basis of reasonable costs (excluding anticipated profits) it has incurred in the performance of the Purchase Order. Upon receipt of such notice of termination, Seller shall, unless otherwise directed by Buyer, (a) immediately terminate all work under the applicable Purchase Order; (b) terminate all Seller issued purchase orders relating to the performance of the Purchase Order terminated by Buyer's notice; (c) to the extent requested by Buyer, transfer title and deliver

to Buyer (i) all completed work which conforms to the requirements of Buyer's Purchase Order and (ii) all reasonable quantities of work in process and materials produced or acquired in respect of the performance of the work terminated which are of a type and quality suitable for producing supplies in conformance to the requirements; (d) take all action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest; and (e) submit to Buyer promptly, but not later than twenty (20) days from the effective date of such termination its termination claim.

Buyer will make no payments for finished goods, works-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in a Purchase Order nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Seller shall not manufacture in advance of Seller's normal material lead-time and production flow time. Any preparation in violation of this prohibition shall be done at Seller's risk, and if Buyer terminates a Purchase Order, the advanced commitment in materials and work done by Seller shall not be claimed in this respect against Buyer.

Notwithstanding the foregoing, if termination is occasioned by Seller's violation of any term or condition of the Purchase Order, including violation of any warranty or delay in delivery, Seller shall not be entitled to any costs, and Buyer may claim against Seller all remedies provided by law and equity. Further, in the event Seller shall become insolvent or be subject to bankruptcy processing, Buyer may, without further obligation to Seller, terminate the Purchase Order in whole or in part upon giving written notice to Seller.

### **13. Liens; Work on Premises.**

Seller hereby irrevocably waives any rights he may now have or which he may acquire with respect to any goods or services governed by the Purchase Order to file liens or charges against Buyer or Buyer's property. Seller shall pay, satisfy and discharge all mechanics', material men's and other liens, and all claims, obligations and liabilities which may be asserted against Buyer or its property by reason of, or as a result of, any acts or omissions of Seller, its subcontractors, agents, employees, representatives, licensees or suppliers.

The safety and health of all persons employed by Seller and its agents or subcontractors on Buyer's premises, and/or any other person who enters upon Buyer's premises for reasons relating to work performed under the Purchase Order shall be the sole responsibility of Seller. Seller shall at all times maintain good order among its employees, agents, and subcontractors and shall not engage for the performance of the Purchase Order any unfit person or anyone not skilled in the work assigned to him. Seller shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees, agents, or subcontractors. Such measures and precautions shall include, but shall not be limited to, following all Buyer safety procedures and requirements, providing all safeguards and warnings necessary to protect workers and others against any conditions on Buyer's premises which could be dangerous and to otherwise prevent injuries of any kind whenever work is being performed.

Seller shall confine all equipment and Seller's employees, agents, or subcontractors to that portion of Buyer's premises where the work is to be performed or to roads leading to and from such work sites, and to any other area which Buyer may permit Seller to use.

Seller shall perform any work to be performed on Buyer's premises in such manner as not to interfere or disrupt the use of Buyer's premises by Buyer, its employees, invitees, lessees, agents and contractors. Upon completion of the work Seller shall leave the premises clean and free of all tools, equipment, and waste material. Seller shall immediately notify Buyer if any person is injured or claims injury in connection with the work on Buyer's premises.

### **14. Changes in Manufacturing Location, Materials or Process.**

Seller shall not make any changes in (i) the manufacturing location of the goods or the manufacturing location of a sub-supplier of any material component of the goods, (ii) any design, materials or processes used for the goods, or (iii) any scope of work or method of performing of services, without reasonable advance written notice to Buyer and Buyer's written consent. Upon request, Seller will furnish to Buyer in advance of making any such changes such information as Buyer may request to evaluate any proposed changes including the following: (a) a description of any changes in manufacturing location of Seller or any sub-supplier, processes or methods; (b) a list of all ingredients in the goods and a description of any changed ingredients; (c) the amount of one or more ingredients and a description of any change in amounts; (d) information concerning

any changes in or addition to Seller's processes; and/or (e) Material Safety Data Sheets for all ingredients and (f) a description of any increase of scope of work.

#### **15. Licenses and Permits.**

Seller shall secure and pay for all licenses and permits which Seller may require to comply fully with all applicable laws, ordinances and regulations in connection with the performance of the Purchase Order including any permits, licenses or other governmental authorization(s) necessary for the exportation or importation of the goods into the designated country of importation. Seller shall be responsible for all damages and shall indemnify and save Buyer harmless from and against all damages and liability, which may arise out of the failure of Seller to secure and pay for any such licenses and permits or to comply fully with any and all applicable laws, ordinances and regulations.

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

For all products covered by the Purchase Order, Seller shall provide to Buyer an up-to-date certificate of origin pursuant to the provisions of the North American Free Trade Agreement. Seller shall provide to Buyer such content information as Buyer reasonably requests for the purpose of assisting Buyer's customers in complying with all applicable content reporting requirements or for assisting Buyer's custom declaration for importation or transshipment.

#### **16. Force Majeure.**

Neither party shall be liable for defaults due to acts of God or the public enemy, acts or demands of any government or any government agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence; provided, however, Force Majeure shall not include any labor problems or strikes relating to the workforce of Seller or its suppliers or subcontractors or any commercial circumstances affecting pricing or availability of any goods or raw materials furnished by Seller or its suppliers or subcontractors. Each party shall notify the other in writing of the cause of such delay within 5 days after the beginning thereof. During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase goods and services from other sources and reduce its schedules to Seller by such quantities, without liability to Seller or have Seller provide the goods and services from other sources in quantities and at times requested by Buyer and at the price set forth in the Purchase Order, if requested by the Buyer. Seller shall promptly after Buyer's request for adequate assurances provide Seller's assurances regarding the likely length of the delay and shall in all cases use its best efforts to eliminate the causes of the delay. If the delay is likely to exceed 30 days, Buyer may terminate the Purchase Order without liability to Seller.

#### **17. Service Parts.**

The Seller warrants that items of the type purchased under the Purchase Order, including the subassemblies and spare parts, shall be made available by Seller to Buyer and its customers during the operational life of the items purchased or for ten (10) years after the date of final shipment under this order, whichever is later. Further, during said period, Seller shall continue to provide technical support and service. In the event Seller discontinues manufacture of the aforementioned items, sub-assemblies or spare parts thereof or does not provide any of them in a timely manner for Buyer's requirements, Seller shall make available to Buyer all drawings, specifications, data and know-how which will enable and facilitate Buyer, its suppliers, or its customers to manufacture or procure and use and sell said items, sub-assemblies and spare parts under a royalty-free license which is hereby granted.

#### **18. Indemnification.**

Seller will indemnify, defend and hold harmless Buyer, its affiliates and customers harmless from and against any and all losses, costs, damages, liabilities, claims, expenses (including reasonable legal fees) and the payment of all sums of money owing or incurred (a) by reason of accidents, injuries or damages to persons or property directly or indirectly resulting from Seller goods and/or

services or Seller's performance under the Purchase Order or (b) Seller's breach of its warranties or violation of its obligations under the Purchase Order.

#### **19. Legal Compliance.**

Seller represents and warrants that in performance of all work under the Purchase Order, Seller and its agents and subcontractors have complied with or will comply with all applicable federal, state, local, and foreign laws and ordinances including, but not limited to, all export laws, restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority, the Occupational Safety and Health Act of 1970 (29 U.S.C. Sections 651, 678), the Fair Labor Standards Act of 1938 (29 U.S.C. Sections 201-219), the Work Hours and Safety Act of 1962 (40 U.S.C. Sections 327, 333), the Equal Employment Opportunity Act (42 U.S.C. Sections 2000e, et seq.), Equal Opportunity Clauses of Executive Order 11246, (60-1.4), Section 503 of the Rehabilitation Act of 1973, (60-741.5), and Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, (60-250.4), as well as any other regulations pertaining to these orders and federal regulations governing affirmative action programs and all laws restricting the use of convict labor.

Seller represents and warrants that in performance of work under the Purchase Order, Seller and its agents and subcontractors have complied with all laws, regulations, statutes and ordinances of all governmental entities including local, state, federal and foreign, now or hereafter enacted, which regulate any material because it is radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601, 9615, 9631-9633, 9641, 9651, 9657), the Resource Conservation Recovery Act of 1976, the Federal Water Pollution Control Act (33 U.S.C. Sections 1251, et seq.), the Clean Air Act (42 U.S.C. Sections 7401, et seq.), the Montreal Protocol on Substances that Deplete the Ozone Layer (42 U.S.C. Sections 7671, 7642), the Toxic Substances Control Act (15 U.S.C. Sections 2601, et seq.) and similar laws, rules, statutes, treaties or orders and international understandings. Upon request, Seller agrees to issue certificates certifying compliance with any laws or regulations as may be applicable to the material, products, or services furnished hereunder.

If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all component materials in the goods; (b) the amount of one or more component materials; and (c) information concerning any changes in or additions to such component materials. Prior to and with the shipment of the goods, Seller agrees to furnish to Buyer, in all cases, sufficient warning and notice in writing (including appropriate labels on goods, containers and packing) of any hazardous material which is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the goods, containers and packing shipped to Buyer.

Seller shall furnish to Buyer any information required to enable Buyer to comply with such applicable laws, rules, and regulations in its use of the goods and services. If goods and services are incorporated by Buyer into products and services sold under a federal contract or subcontract, those applicable procurement regulations that are required by federal statute or regulation to be inserted into contracts or subcontracts shall be deemed to apply to the Purchase Order. Seller warrants that (i) each chemical substance contained in goods is on the inventory of chemical substances compiled and published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act, and (ii) all Material Safety Data Sheets required to be provided by Seller for goods shall be provided to Buyer prior to shipment of the goods and shall be complete and accurate. Seller hereby warrants, certifies and represents and agrees that neither the goods nor any component of the goods, (as defined in the Purchase Order): a) contains any "class I substance", as that term is defined in 42 USC Section 7671 (3) as now in existence or hereafter amended, or b) has been "manufactured with a process that uses" any "class I substance" within the meaning of 42 USC Section 7671j (d) (2) as now in existence or hereafter amended.

#### **20. Miscellaneous.**

(a) All notices, demands and other communications which may or are required to be given to or made by either party to the other in connection with the Purchase Order shall be in writing (including fax, or other similar writing) and shall be deemed to have been duly given or made (i) if sent by certified mail, return receipt requested, five days after the posting thereof with first class

postage attached, (ii) if sent by hand or overnight delivery, upon the delivery thereof, and (iii) if sent by fax, upon confirmation of receipt of such fax, in each case addressed to the business unit president and principal place of business of each party or to such other address as either party hereto may specify from time to time by notice to the other party.

(b) Neither the Purchase Order nor any of the rights, interests or obligations hereunder shall be transferred, assigned or delegated (by operation of law or otherwise) by Buyer without the prior written consent of Seller. Any attempted transfer or assignment of the Purchase Order or any of the rights, interests, duties, or obligations hereunder by Buyer in violation of the terms hereof shall be void and of no force or effect. Nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than Buyer and Seller and their permitted assigns, any rights, remedies or other benefits under or by reason of the Purchase Order.

(c) Except as expressly provided herein, the Purchase Order constitutes the complete agreement of the Buyer and Seller with respect to the purchase and sale of Seller products and services and supersedes all prior written or oral agreements or understandings, prior performance, courses of dealing and industry practices. The Purchase Order may not be changed, amended, terminated, augmented, rescinded or discharged (other than by performance), in whole or in part, except by a writing executed by Buyer and Seller which expressly references the Purchase Order.

(d) Any term or provision of the Purchase Order that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or arbitrator declares that any term or provision hereof is invalid or unenforceable, the court or arbitrator making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and the Purchase Order shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

(e) The relationship between Buyer and Seller under the Purchase Order is that of buyer and seller, and Buyer shall have no right and shall not attempt to enter into contracts or commitments in the name of or on behalf of Seller or to bind Seller in any respect whatsoever. Nothing herein shall be construed to make Buyer the joint venturer, partner, agent, servant, franchisee or employee of Seller, and Buyer shall not have the power to bind or obligate Seller.

(f) THE PURCHASE ORDER SHALL BE CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF OHIO WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS, AND EACH PARTY HERETO SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN OHIO IN ANY ACTION OR PROCEEDING PERMITTED UNDER THE PURCHASE ORDER RELATING TO OR ARISING OUT OF SELLER PRODUCTS OR SERVICES OR ANY OFFER OR SALE OF SELLER PRODUCTS OR SERVICES.

(g) No modification or waiver of any provision of the Purchase Order will be effective for any purpose unless such modification or waiver is specifically set forth in a writing signed by a procurement representative of the party to be charged with such modification or waiver. No waiver of any right or remedy in respect to any occurrence or event on one occasion will be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

(h) Seller represents and warrants to Buyer that Seller has not offered or given and will not offer or give any employee, agent, or representative of Buyer or any government any gratuity or improper payment with the intent of securing any business from Buyer or favorable treatment under any agreement with Buyer as prescribed in FAR 52.203-3. Any breach of this warranty shall be a material breach of the terms and conditions of each and every Purchase Order between Buyer and Seller.

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