

1. Terms of Order

This purchase order is an offer by the company identified on the face of this purchase order ("**Buyer**") for the purchase of the goods specified (the "**Goods**") from the party to whom the purchase order is addressed ("**Seller**") in accordance with and subject to the following terms and conditions, together with the terms and conditions on the face of this purchase order or contained in any attachments, exhibits, specifications, drawings, notes, instructions or other information, whether physically attached hereto or incorporated herein by reference (collectively, this "**Order**"). Except as otherwise provided in this sentence, this Order constitutes the entire and exclusive agreement of the parties with respect to Buyer's purchase of the Goods from Seller and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and communications, both written and oral, with respect to the subject matter of this Order; provided, however, in the event Buyer and Seller are parties to a separate written agreement executed by both Buyer and Seller with respect to the purchase and sale of the Goods (the "**Separate Agreement**") these terms and conditions shall supplement the terms and conditions of the Separate Agreement, but in the event any provisions of the Separate Agreement conflict with these terms and conditions such provisions of the Separate Agreement shall control and shall supersede such conflicting provisions of these terms and conditions. Buyer's submission of this Order is conditioned on Seller's agreement that any terms different from or in addition to the terms of this Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing (other than any Separate Agreement as provided above), shall not form a part of this Order, even if Seller purports to condition its acceptance of this Order on Buyer's agreement to such different or additional terms. This Order will be deemed accepted by Seller upon the first of the following to occur: (a) Seller making, signing or delivering to Buyer, whether in electronic format or in written form, any letter, form or other writing or instrument acknowledging acceptance; (b) any performance by Seller under this Order; or (c) the passage of five (5) business days after Seller's receipt of this Order without written notice to Buyer that Seller does not accept. This Order does not constitute a firm offer within the meaning of Section 554.2205 of the Iowa Uniform Commercial Code (the "**UCC**"), and may be revoked by Buyer at any time prior to acceptance. The terms of this Order

also apply to any repaired or replacement Goods provided by Seller hereunder.

2. Delivery

Seller shall deliver the Goods in the quantities, at the delivery location (the "**Delivery Location**") and on the date(s) specified in this Order (the "**Delivery Date**"). If no date for delivery is specified, Seller shall deliver the Goods in full within a reasonable time after of receipt of this Order. Timely delivery is of the essence. Seller will immediately notify Buyer if Seller's timely performance under this Order is delayed or is likely to be delayed. Buyer's acceptance of Seller's notice will not constitute Buyer's waiver of any of Seller's obligations hereunder. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Order immediately by providing written notice to Seller and Seller shall indemnify and reimburse Buyer from and against any claims, losses, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.

3. Inspection

Buyer reserves the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may reject all or any portion of the Goods if Buyer determines the Goods are defective or nonconforming. If Buyer rejects any portion of the Goods, Buyer has the right, at its option, to (a) return the defective or non-conforming Goods to Seller for a refund or credit; (b) require Seller to replace the defective or non-conforming Goods so that such Goods meet the requirements of this Order; or (d) accept the defective or non-conforming Goods conditioned on Seller providing a refund or credit in an amount Buyer reasonably determines to represent the diminished value of the defective or non-conforming Goods. Buyer will hold any Goods rejected under this Order at Seller's risk and expense, including storage charges, while awaiting Seller's return shipping instructions. Seller will bear all return shipping charges, including, without limitation, insurance charges Buyer incurs on Seller's behalf. If Buyer requires repair or replacement of the Goods, Seller shall promptly repair or replace the nonconforming Goods and pay for all related expenses, including shipping charges for the repaired or replacement Goods. If Seller fails to timely repair or deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order pursuant to Section 6 hereof. Any inspection or other action by Buyer under this Section shall not affect Seller's obligations under this Order, and Buyer shall have

the right to further inspection after Seller takes remedial action.

4. Price and Payment

The price of the Goods is the price stated on the face of this Order (the “**Price**”). If no price is included in this Order, the Price shall be the price specified in Seller’s published price list in effect as of the date of this Order. Unless otherwise specified in this Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. Seller shall invoice Buyer for this Order within thirty (30) days of delivery. Unless otherwise stated in this Order or unless otherwise provided in a Separate Agreement, Buyer shall pay all properly invoiced amounts due to Seller within forty-five (45) days after receipt of such invoice, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods meet the requirements of the Order.

5. Shipping and Packaging

Delivery shall be made in accordance with the terms of this Order. The Order number must appear on all documents pertaining to this Order, invoices, packing lists, correspondence and all shipping documents. Unless otherwise authorized by Buyer in writing, Seller shall not substitute material or ship more than the quantity ordered. If Seller ships more than the quantity ordered by Seller pursuant to this Order, Buyer may elect, within Buyer’s sole discretion, to accept the excess Goods in accordance with the terms of this Order or to reject such excess Goods. Seller shall be solely responsible for making all arrangements for the return to Seller of all excess Goods rejected by Buyer and for all costs and expenses associated with the return of all such excess Goods to Seller. Seller shall be solely responsible for and pay all costs of delivering the Goods to the Delivery Location, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods (“**Customs Duties**”). Seller will take all reasonable steps to minimize Customs Duties costs.

Seller will preserve, pack, package and handle the Goods so as to protect the Goods from loss or damage and in accordance with best commercial practices in the absence of any specifications Buyer may provide. Seller must provide Buyer prior written notice if Seller requires Buyer to return any packaging material and any such returns shall be made at Seller’s expense.

6. Revisions

Buyer may, from time to time, initiate revisions to this Order by issuing to Seller written notices (each, a “**Revised Order**”) that alter, add to or deduct from the Goods, but that are otherwise subject to the terms of this Order. Seller will promptly comply with the terms of any Revised Order, provided that Seller may, within five (5) business days after receiving a Revised Order, submit a request for equitable adjustment specifying the adjustment in the Price or time for performance, or both, resulting from the Revised Order. In such event, the parties shall in good faith negotiate an amendment to this Order to provide for an equitable adjustment to the Price, time for performance, or both with respect to the Revised Order, provided Seller shall continue its performance under this Order as modified by the Revised Order during the course of such negotiations and this Order as modified by the Revised Order shall become this Order.

7. Termination

Buyer may terminate this Order with respect to undelivered Goods, in whole or in part, at any time for any reason upon thirty (30) days' prior written notice to Seller. In addition to any remedies provided herein, Buyer may terminate this Order with immediate effect upon written notice to Seller, either before or after acceptance of Goods, if Seller has breached or failed to comply, in whole or in part, with any of the terms of this Order. If Seller becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then Buyer may terminate this Order. If Buyer terminates this Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

8. Warranties

Seller warrants to Buyer that for a period of twelve (12) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications of this Order; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free

and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity, including the UCC. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance with any of the foregoing warranties. If Buyer gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods and pay for all related expenses, including transportation charges for the return of the defective or non-conforming Goods to the Seller and the delivery of repaired or replacement Goods to Buyer.

9. Indemnification

Seller shall defend, indemnify and hold harmless Buyer and its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders, and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "**Losses**") arising out of or occurring in connection with: (a) the Goods purchased from Seller; (b) Seller's negligence, willful misconduct or breach of the terms of this Order; or (c) any claim that Buyer's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without the Indemnitee's prior written consent.

10. Confidential Information

All non-public, confidential or proprietary information of Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Order is confidential, solely for the use of performing this Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply

to information that is: (a) in the public domain; (b) rightfully and legally known to Seller at the time of disclosure; or (c) rightfully and legally obtained by Seller on a non-confidential basis from a third party.

11. Insurance

Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by this Order; (c) if Seller will use or provide for use of motor vehicles in providing and/or performing this Order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance evidencing the coverage specified in this Order.

12. Compliance with Law

Seller warrants and represents to Buyer that it is in compliance with and shall remain in compliance during performance of this Order and ensure that its employees, agents, contractors and subcontractors (the "**Personnel**") comply with all applicable laws, regulations and ordinances, including, without limitation, the Occupational Safety and Health Act, Toxic Substances Control Act, and Foreign Corrupt Practices Act. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under this Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. If Seller fails to comply with the laws, orders, rules, ordinances and regulations and as a result Buyer is fined, Seller agrees to pay the fine and costs incident thereto or reimburse Buyer for payment. To the extent that Seller's Personnel are required to enter onto Buyer's site or property, Seller shall ensure that Personnel comply with Buyer's health, safety and environmental policies and standards.

13. Taxes

Unless specified otherwise on the face of the Order, the prices are inclusive of, and Seller shall be solely responsible for and pay, all federal, state and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption

tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Order by Buyer.

14. Title and Risk of Loss

Risk of loss of the Goods remains with Seller and title will not pass to Buyer until the Goods are delivered to and accepted by Buyer at the Delivery Location.

15. Force Majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under this Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike or embargoes. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Order. If a Force Majeure Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Buyer may terminate this Order immediately by giving written notice to Seller.

16. LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ORDER OR OTHERWISE, BUYER WILL NOT BE LIABLE TO SELLER WITH RESPECT TO THE SUBJECT MATTER OF THIS ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THIS ORDER, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THIS ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH

CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

17. Waiver and Release of Liens

Upon Seller's receipt of payment for amounts properly invoiced, Seller hereby waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against Buyer for the Goods provided pursuant to this Order.

18. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

19. Governing Law

All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Iowa without giving effect to any choice or conflict of law provision or rule (whether of the State of Iowa or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Iowa. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States or the courts of the State of Iowa, in each case located in Polk County, Iowa, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. Notices

All notices, consents, claims, demands, waivers and communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section 20.

21. Inconsistent Terms

The terms found on the face of this Order shall govern over the terms and conditions herein. As

noted in Section 1 above, the terms of any Separate Agreement shall govern over any conflicting or inconsistent terms of this Order.

22. Cumulative Remedies

The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise.

23. Survival

Provisions of this Order which by their nature should apply beyond any termination of this Order will remain in effect for the period expressed within the Section but not longer than a period of two (2) years.

24. Severability

If any term or provision of this Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or render unenforceable such term in any other jurisdiction.

25. Miscellaneous

Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Order without Buyer's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve Seller of any of its obligations

hereunder. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by Buyer. No waiver by any party of any of the provisions of this Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Order by Buyer shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy or privilege hereunder preclude any other exercise of any additional right, remedy or privilege. Provisions of this Order which by their nature should apply beyond the performance, expiration or termination of this Order shall remain in full force and effect and survive such performance, expiration or termination. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Order. **BUYER AND SELLER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO AND IN ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, DEMAND, DISPUTE OR OTHER MATTER WHATSOEVER ARISING OUT OF THIS ORDER.**