

TERMS AND CONDITIONS OF PURCHASE

1. **Acceptance; Agreement.** These Terms and Conditions supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms and Conditions represent the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. These Terms and Conditions expressly limit acceptance to these provisions. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of these Terms and Conditions is hereby deemed material and objected to and rejected. No terms of any document or form submitted by Seller shall be effective to alter or add to the provisions contained in these Terms and Conditions. Unless otherwise stated herein, Seller's acknowledgment of Buyer's order or commencement of any work or performance of any services under Buyer's order shall constitute acceptance by Seller of these Terms and Conditions.

2. **Delivery.** Time is of the essence with respect to the delivery of goods ("Goods") and the performance of services ("Services") being purchased by Buyer. If the delivery of the Goods and/or the performance of the Services is not commenced by the specified starting date or completed within the specified time, Buyer may, in addition to any other rights or remedies it may have, terminate the order, without liability, for any Goods not yet shipped or Services not yet provided and purchase substitute goods or services and charge Seller for any extra costs. If, in order to comply with delivery date specified on the front hereof, Seller must ship by a more expensive way than specified herein, Seller shall pay any increased costs.

3. **Risk of Loss.** Seller shall assume and pay for any loss or damage to the Goods ordered by Buyer from any cause whatsoever until the Goods are delivered to Buyer at the F.O.B. point agreed upon by the parties.

4. **Importation Costs.** Seller shall be responsible for and shall bear all costs involved in obtaining all governmental permissions and authorizations necessary to any importation of the Goods required to deliver the Goods to the F.O.B. point.

5. **Warranties.** Seller warrants that the Goods or Services purchased hereunder will be (a) in full conformity with the specifications, drawings, descriptions and/or samples furnished or specified by Buyer, (b) free from defects in material, workmanship and design, and (c) of good merchantable quality and fit and sufficient for the purposes intended. All warranties shall survive any inspection, delivery, acceptance, or payment. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

With respect to Goods or Services which are resold or otherwise transferred to a third party by Buyer, Buyer's customers shall have the full benefit of all warranties from Seller and its suppliers, whether hereunder or otherwise, and Seller agrees to any assignments of such warranties to such customers by Buyer.

6. **Inspection.** All Goods are subject to inspection by authorized representative(s) of Buyer and/or Buyer's customers at all reasonable times and places, including during production. Buyer reserves the right to reject or to revoke acceptance of Goods which fail to meet any requirement of Buyer's order, notwithstanding any payment or any prior inspection or test.

7. **Indemnification.** Seller shall indemnify, defend and hold harmless Buyer and its officers, directors, employees, representatives and agents from and against any and all loss, cost, damage, expense, claim, or cause of action (including attorneys' fees) resulting from or in any way arising out of any defect in the Goods or Services or any act or omission of Seller, its agents, employees or subcontractors or any persons acting for it or on its behalf. This indemnification is in addition to the warranty obligations of Seller.

8. **Intellectual Property.** Seller warrants that the manufacture, sale and use of the Goods will not infringe any patent, copyright, trademark, or trade secret. Seller shall defend, at its expense, any claim or suit brought against Buyer or Buyer's customers on account of any such infringement or alleged infringement and shall indemnify, defend and hold harmless Buyer and its customers from and against all loss, cost, damage, expense, claim, action or cause of action (including attorneys' fees) resulting from such or in any way arising out of such infringement or alleged infringement. If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing goods of equal quality and performance.

9. **Insurance.**

A. Seller shall maintain in force, and shall continue to maintain in force, insurance with a carrier(s) with financial strength of at least A- VIII or better as defined by AM Best (in amounts and coverage satisfactory to Buyer) sufficient to cover any and all general and product liability claims but in no event less than \$2 million per occurrence and \$5 million annual aggregate for bodily injury and property damage with a combined single limit for products and completed operations liability, which may be brought with respect to the Goods or Services, whether by Buyer or any third party. If seller is a foreign seller, the insurance must include a worldwide coverage territory endorsement including coverage for suits, demands or claims occurring or brought in North America. The Seller's insurance will be (i) primary and non-contributory; (ii) name the Buyer as an Additional Insured as its interests applies per this written agreement using additional insured endorsements CG 20 10 (and if applicable CG 20 37) or coverage at a minimum as broad as these endorsements provide; (iii) and provide a Waiver of Subrogation in favor of the Buyer. Seller shall furnish Buyer with a Certificate of Insurance evidencing such coverage.

B. Seller shall maintain in force, and shall continue to maintain in force, Workers' Compensation insurance with a carrier(s) with financial strength of at least A- VIII or better as defined by AM Best, including coverage for all costs, benefits, and liabilities under Workers' Compensation and similar laws which may accrue in favor of any person employed by Seller, for all States in which the Seller will perform services for Buyer, and Employer's Liability insurance with limits of liability of at least \$500,000 per accident or disease and

\$1,000,000 aggregate by disease. Seller warrants that its subcontractors will maintain Workers' Compensation and Employer's Liability insurance, and Seller shall indemnify Buyer for any loss, cost, liability, expense and/or damage suffered by Buyer as a result of failure of its subcontractors to maintain such insurance. Seller further warrants that, if a subcontractor does not maintain Workers' Compensation insurance, Seller's Workers' Compensation insurance shall insure the subcontractor. Seller may self-insure Workers' Compensation only in States where the governing State bureau has issued to the Seller a qualified self-insurance license for Workers' Compensation. The Seller's insurance will be (i) primary and non-contributory; (ii) and provide a Waiver of Subrogation in favor of the Buyer. Seller shall furnish Buyer with a Certificate of Insurance evidencing such coverage.

C. Seller shall maintain in force, and shall continue to maintain in force, Automobile Liability insurance with a carrier(s) with financial strength of at least A- VIII or better as defined by AM Best for owned, non-owned and hired vehicles, with limits of at least \$1,000,000 per occurrence for bodily injury and property damage combined. If Seller does not own or lease any vehicles, the Seller's Commercial General Liability insurance shall be extended to provide insurance for non-owned and hired automobiles in lieu of separate Automobile Liability insurance. The Seller's insurance will be (i) primary and non-contributory; (ii) name the Buyer as an Additional Insured as its interests applies per this written agreement; (iii) and provide a Waiver of Subrogation in favor of the Buyer. Seller shall furnish Buyer with a Certificate of Insurance evidencing such coverage.

10. **Changes.** Buyer shall have the right at any time to make changes in drawings, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, an equitable adjustment shall be made therein. Seller agrees to accept any such changes subject to this section.

11. **Set Offs.** Buyer has the right to set off against any amounts due Seller hereunder any amounts owed to Buyer by Seller arising from any other transaction.

12. **Force Majeure.** Buyer shall not be liable for failure to take delivery of the Goods or to allow performance of the Services if such failure or inability is due to causes beyond Buyer's reasonable control.

13. **Termination for Cause.** Buyer may terminate its order without liability, in whole or in part, at any time, if (i) Seller fails to deliver the Goods or to perform the Services by the specified time or any extension thereof authorized by Buyer in writing, (ii) a petition initiating a proceeding under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller, (iii) Seller executes an assignment for benefit or creditors, (iv) a receiver is appointed for Seller or any substantial part of its assets, or (v) Buyer shall have any reasonable ground for insecurity with respect to Seller's ability to perform and Seller is unable to provide Buyer with adequate assurance of its ability to perform within ten days after written request therefore by Buyer.

Buyer's right under this section to terminate its order is not an exclusive remedy. Buyer shall be entitled to all other rights and remedies it may either at law or in equity. No termination hereunder shall affect any accrued rights or obligations of either party as of the effective date of such termination.

14. **Termination for Convenience of Buyer.** Buyer may cancel or terminate all or any part of its order at its convenience at any time by written notice to Seller. In such event, Seller may claim only properly documented out-of-pocket costs for work already performed, which shall in no event be more than the full price of the Goods or Services being cancelled. For specially prepared products which are unique to Buyer's order, any partially completed work or raw materials whose full costs are included in the cancellation charges shall be identified in writing and held by Seller for disposition in accordance with Buyer's written instructions.

15. **Compliance.** Seller warrants that the Goods and Services are produced or provided in compliance with and meet all requirements and standards of all applicable Federal, State, and local laws and regulations.

16. **Waiver.** Failure of Buyer at any time to require Seller's performance of any obligation hereunder shall not affect Buyer's right to require performance of that obligation or of any other obligation of Seller hereunder. No delay, or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

17. **Miscellaneous.** Seller shall not assign Buyer's order or any monies due or to become due from Buyer hereunder without Buyer's prior written consent. These Terms and Conditions shall be construed in accordance with the laws of Tennessee, without regard to any rules on conflicts of laws. The section headings contained herein are not part of these Terms and Conditions and are included solely for the convenience of the parties.