

PURCHASE CONTRACT

In consideration of the undertakings under the transaction between the buyer ("Buyer") and the seller ("Seller"), as identified on the face of this document and/or the attached purchase order, for the purchase, acquisition and/or provision of certain products, goods, items, and/or materials ("Goods") and/or services together with any products, goods, items and/or materials provided as part of or in the course of such services ("Services") (collectively, "Goods and/or Services"), Buyer and Seller agree to the following provisions, terms and conditions, which shall control such purchase transaction (collectively, this "Purchase Contract").

1. ACCEPTANCE; TIME. Seller's acknowledgement of this Purchase Contract, the transaction thereunder, or commencement of any work, shipment or provision of any Goods or performance of any Services shall constitute acceptance by Seller of this Purchase Contract and all of its provisions, terms and conditions. Seller shall contact Buyer immediately upon Seller's becoming aware that a delivery cannot be made on schedule. Buyer's production schedules are based upon the agreement that all Goods and/or Services will be delivered to or performed at the date specified on the face of this Purchase Contract or agreed upon with Buyer and in the quantity specified on the face of this Purchase Contract and/or on the attached purchase order. Time is, therefore, of the essence for this Purchase Contract. If deliveries are not made at the time agreed upon, Buyer reserves the right to cancel or to purchase elsewhere without liability to Seller, and to hold Seller fully accountable for any and all damages resulting therefrom.

2. DELIVERY AND PERFORMANCE; COSTS AND TAXES. All Goods shall be delivered to, and all Services shall be performed at, the location(s) specified on the face of this Purchase Contract and/or on the attached purchase order, or to the extent no location is specified, Buyer's main place of business of Buyer or another expressly designated by Buyer to receive such Goods and/or Services (the "Location(s)"). All Goods are to be suitably prepared and packed for shipping and shall be shipped pursuant to the specific routing instructions on the face of this Purchase Contract and/or on the attached purchase order or as otherwise instructed by Buyer. All packages, packing slips and invoices shall be plainly marked to show Buyer's order number. Seller shall be responsible and liable for and pay any and all (i) costs, expenses, charges, and fees resulting from or arising out of or in connection with Seller's performance of this Purchase Contract, including, without limitation, the shipment and/or delivery of any Goods to, and the performance of any Services at, the Location(s), including, but not limited to, any charges, fees, expenses and costs for shipping, freight, storage, warehousing, loading, unloading, delivery and insurance ("Shipping Costs") and (ii) taxes, charges, fees, duties, and imposts of any kind in connection with the performance of this Purchase Contract, including, without limitation, the sale, purchase, handling, shipment, delivery, provision and/or performance of any Goods and/or Services and the making, receipt and collection of any payment hereunder, including, without limitation, any value added, sales and service taxes, imposts, and custom duties, and any other taxes ("Taxes"), except solely to the extent expressly imposed on Buyer in writing as specified on the face of this Purchase Contract and/or on the attached purchase order ("Buyer Taxes").

3. TITLE; RISK OF LOSS; NON-CONFORMITY. Title and risk of loss for (i) any Goods shall pass to Buyer once such Goods are delivered and properly unloaded at the Location(s) and (ii) any Services shall pass to Buyer once Services have been expressly accepted by Buyer; until such time, Seller shall have all risk of loss for any Goods and/or Services. Buyer shall have the right to inspect the premises of Seller used in connection with the production of the Goods and/or Services at any time. All Goods and/or Services are subject to inspection and testing and acceptance by Buyer. If any Goods and/or Services are defective or not in conformity with this Purchase Contract, in addition to other remedies under any applicable law, Buyer may, in its sole discretion, (i) require correction, repair, replacement and/or re-performance of such Goods and/or Services ("Correction") at Seller's expense, (ii) revoke acceptance of or reject such defective or non-conforming Goods and/or Services or any defective or non-conforming Correction, and cancel this Purchase Contract regarding such defective or non-conforming Goods and/or Services without liability to Seller or any third party, and/or (iii) accept such defective or non-conforming Goods and/or Services with an equitable adjustment to the Price of such Goods and/or Services. Payment shall not constitute waiver of any rights hereunder. Acknowledgment of receipt on packing slips or bills of lading or otherwise shall not constitute acceptance. Any Goods, or goods, products, items and/or materials of Services, subject to the foregoing item (ii) shall be returned at Seller's expense, including, without limitation, all Shipping Costs and Taxes.

4. PRICE; PAYMENT. In consideration of any Good delivered to Buyer and/or any Service performed and accepted by Buyer under and in accordance with the terms of this Purchase Contract, Buyer agrees to pay the price expressly set forth on the face of this Purchase Contract and/or on the attached purchase order for such Good and/or such Service ("Price") to the extent payable and due under this Purchase Contract. All invoices shall be sent to Buyer's Accounts Department and shall be in duplicate. Any cash discount period will date from the receipt of the Goods or from the date of the invoice, whichever is later. Seller warrants the prices of any Goods and/or Services set forth herein shall not exceed those charged by the Seller to any other customers purchasing the same or substantially similar items in similar or smaller quantities. The prices of this order are fixed and cannot be increased except with the express prior approval of the Buyer. Any Price payable and due under this Purchase Contract, in accordance with the terms, after receipt of invoice or delivery whichever the latter; *provided, however*, that the Price for any Good and/or Service shall in no event be payable and due upon such Good's delivery to Buyer and/or upon the acceptance by Buyer of the performance of such Service; and *provided further* that the Price and any Buyer Taxes shall not be payable and due (i) for any Goods and/or Services subject to Section 3(i) until successful provision of a non-defective and conforming Correction, (ii) for any Goods and/or Services subject to rejection or revocation under Section 3(ii), (iii) to such extent of an equitable adjustment under Section 3(iii) of this Purchase Contract, (iv) to the extent of any violation of the price warranty under this Section 4, (v) to the extent such Goods and/or Services have not been provided or been returned if this Purchase Contract is terminated or canceled as a whole or regarding such Goods and/or Services, and (vi) to the extent of any claim or right of payment or damages that Buyer has against Seller and Buyer sets off against such Price and/or Buyer Taxes.

5. WARRANTY. Seller warrants that each of all Goods and/or Services and any Correction will (i) conform to the statements, specifications, drawings, data, information, samples or other description furnished or specified by Buyer, or to the extent none were furnished or specified, those stated by Seller and agreed to by Buyer (the "Specifications"),

(ii) will be fit for its intended purpose, and (iii) be of good and merchantable quality, materials and workmanship and free from any defect (whether design, manufacture or otherwise). These warranties shall (aa) run to Buyer, its successors, assigns, customers and all users and recipients or beneficiaries of the use of the Goods and/or Services and/or Corrections who shall be third party beneficiaries under this Section 5 and (bb) remain in effect as to each of the Goods and/or Services and Corrections for a period of time consistent with the warranty life normally offered by Seller or any longer time agreed between Buyer and Seller. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

6. INDEMNIFICATION. Seller shall protect, defend at its sole expense, indemnify and hold harmless Buyer, its directors, officers, employees, agents, customers and affiliates ("Indemnitees"), from and against any and all actions, suits, arbitration, proceedings, judgments, awards, orders, claims, demands, threats, liabilities, assessments, losses, damages and costs and expense (including, without limitation, attorneys' and witness fees) by or in favor of any person whatever arising out of, incident to, or in any way connected with any (i) breach of warranty or representation by Seller under this Purchase Order, (ii) defect or product liability (including, without limitation, any product liability claim based on design, manufacturing, warning or other defect) for any Goods and/or Services and/or any Correction, (iii) negligence, gross negligence, willful misconduct and/or violation of any law, including in the case of any Indemnitee's comparative or contributory negligence, except to the extent caused by the sole negligence of an Indemnitee, and/or (iv) allegation or assertion that any Goods and/or Services and/or any Correction infringes any patent, copyright, trademark, service mark, trade dress, trade secret or other intellectual property right or any other right of any third party, except solely to the extent such allegation is based only on specifications expressly provided by Buyer under this Purchase Contract to which such Good and/or Service exactly conforms. Buyer agrees that it will reasonably notify Seller as to such reasonably serious allegation. Without limiting Seller's obligations or Buyer's rights under the foregoing provisions, in case any Good and/or Service or Correction is held to constitute an infringement and the use, sale or provision of such Good and/or Service or Correction is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using such Good and/or Service or Correction, or replace same with a non-infringing Good and/or Service or Correction substantially identical therewith, or in the event of the impossibility of the foregoing options grant Buyer a credit for the price of such Good and/or Service or the Good and/or Services underlying the Correction.

7. CHANGES. Buyer may at any time by written change order make changes in the Goods and/or Services to be furnished hereunder or their quantities or delivery dates. If the cost of, or time required for, furnishing the Goods and/or Services ordered hereby is objectively increased or decreased as result of such change order, an equitable adjustment in the contract price and/or delivery schedule will be made in the change order. If such a price and/or delivery adjustment is not included in the change order, no increase in price or delay in delivery will be allowed unless Seller notifies Buyer in writing within thirty (30) days from the date of the change order, of its claim for such an increase in price or delay in delivery. Seller may not make substitutions, modifications or improvements to the Goods and/or Services unless approved in advance by Buyer in writing, which approval shall be sought pursuant to written notice from Seller to Buyer; provided, however, that Seller may make substitutions, modifications or improvements to the Goods and/or Services to the extent necessary to conform the Goods and/or Services to applicable regulation or law. Seller shall provide Buyer with prior written notice before making any such substitutions, modifications or improvements pursuant to the terms of this Section 7.

8. WAIVER; LIMITATION. Without limiting any other rights and remedies of Buyer, if, as a result of any default or breach of any performance by Seller under this Purchase Contract, Buyer covers or procures any Correction for any Goods and/or Services from any third party, Seller will be liable for any damages, prices, charges, fees and losses for such Correction. These remedies shall be cumulative and in addition to any other or further remedies provided in law or in equity. A waiver by Buyer of any of the terms and conditions of this Purchase Contract shall not constitute a waiver of any similar provision of other such breach. Buyer's total and aggregate liability under this Purchase Contract shall be limited to payment of any Price payable and due pursuant to Section 4. **IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, LIQUIDATED, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE) IN CONNECTION WITH THIS PURCHASE CONTRACT, ANY BUYER PROPERTY, ANY BREACH, AND ANY OTHER ACT OR OMISSION, UNDER ANY THEORY OR LAW, REGARDLESS OF WHETHER IT WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE ANTICIPATED, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IF AND TO THE EXTENT THAT, NOTWITHSTANDING THE FOREGOING PROVISION OF THIS SECTION 8, UNDER ANY APPLICABLE LAW OF MANDATORY APPLICATION ANY LIMITATION OF LIABILITY OR PART THEREOF IS NOT VALID OR ENFORCEABLE, SUCH LIMITATION OF LIABILITY SHALL BE INTERPRETED TO BE EFFECTIVE TO THE GREATEST EXTENT PERMISSIBLE UNDER SUCH APPLICABLE LAW OF MANDATORY APPLICATION. BUYER MAKES NO WARRANTIES AND REPRESENTATIONS, AND HEREBY DISCLAIMS WARRANTIES AND REPRESENTATIONS, EXPRESS, IMPLIED AND STATUTORY, REGARDING ANY BUYER PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, WORKMANSHIP, OR NON-INFRINGEMENT.**

9. OWNERSHIP; PROPRIETARY INFORMATION. Seller agrees that all Specifications, designs, tools, samples, patterns, drawings, equipment, technology, data, items, materials and information owned by Buyer or provided or submitted by Buyer to Seller under or in connection with this Purchase Contract, and any derivative work and technology thereof ("Buyer Property") is or shall be deemed to be owned, and title and ownership thereto shall be retained, by and proprietary to Buyer and confidential information of Buyer and are removable by Buyer at any time. Seller may not, directly or indirectly, use, utilize, copy, reproduce, create derivative works or technology from, reverse engineer or disassemble, or transfer, disclose, provide or make available to any third party, any Buyer Property; except solely that, under and subject to the terms and conditions of this Section 9 and Buyer's directions or limitations, Seller may use such Buyer Property solely as necessary to perform such obligations under this Purchase Contract for which Buyer has provided such Buyer Property to Seller and disclose such Buyer Property to an employee of Seller under its control solely as necessary for such performance if such employee is subject to a

confidentiality obligation. Seller shall preserve, maintain and keep any such Buyer Property in good condition, properly identified and segregated and replace any Buyer Property that is lost, damaged, stolen, destroyed or not returned. Seller shall maintain insurance covering all such Buyer Property against loss, damage, theft, and destruction. Upon completion of such performance, or termination, expiration or cancellation of this Purchase Contract, or revocation or rejection of such performance under this Purchase Contract, Seller shall cease any use and return to Buyer all such Buyer Property and irrevocably delete, without retaining any, copy or manifestation of such Buyer Property. Buyer does not assign, transfer, or grant any use right (except for the limited expressly stated use right under this Section 9), permission or license in or to any right, title or interest in or to any Buyer Property, or any intellectual property in or to such Buyer Property. To the extent Seller or any of its employees acquires any such right, title or interest, Seller agrees to assign, hereby assigns, and agrees to cause such employee to assign, to Buyer all such right, title and interest. Seller agrees to execute and deliver any document, give any testimony or affidavit, provide any documentation, information assistance and cooperation and perform or refrain to perform all acts as Buyer may deem to be necessary or appropriate to carry out the intent and purposes of the provisions of this Section 9.

10. **INFORMATION PROPRIETY TO SELLER.** Any information, including, without limitation, any information that is proprietary to Seller, disclosed with or part of or contained in the Goods and/or Services or any documents and Specifications of Seller shall be deemed to have been disclosed and provided as part of the consideration for the agreements and undertakings under this Purchase Contract and Seller grants Buyer the full, irrevocable, perpetual, transferable and sublicenseable right and license to use, disclose and publish it as Buyer sees fit in its sole discretion.

11. **COMPLIANCE WITH APPLICABLE LAWS.** Seller certifies that all Goods and/or Services will be manufactured, supplied and performed by Seller in accordance with all applicable law, statutes, regulations, rules, codes, ordinance, and governmental and court orders, including, without limitation, the Walsh Healy Act, Fair Labor Standards Act, Occupations Safety and Health Act of 1970, Equal Employment Opportunity Provisions and Executive Orders, or any other federal, state or local law, wherein such acts, provisions and orders may be applicable, including but not limited to specifically set forth OSHA standards.

12. **ASSIGNMENT.** Seller may not assign this Purchase Contract or any rights hereunder, or delegate any obligations hereunder, without prior written consent of Buyer except that claims for monies due or to become due under this contract may be assigned by Seller provided that Seller shall supply Buyer promptly with two copies of any such assignment. This Purchase Contract shall be fully binding on all successors-in-interest, heirs and permitted assigns.

13. **TERMINATION.** Buyer may terminate this Purchase Contract, or any part thereof, and cancel all or any part of the unperformed portion of this Purchase Contract by written notice to Seller effective immediately (i) if Seller does not make deliveries or perform as provided in, or in any way breaches any of the terms of (including, without limitation, Seller's warranties and representations); whereby Seller expressly agrees that any delay in delivery or other failure to perform resulting from Seller's failure to comply with the provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder, or any applicable law, shall not be deemed an excusable delay or otherwise excuse Seller from performance as required; or (ii) in the event of Seller's insolvency, or Seller's filing of a voluntary petition in bankruptcy or the filing of an involuntary petition to have Seller declared bankrupt which petition is not vacated within thirty (30) days from the date of such filing, or Seller's execution of any assignment for the benefit of creditors. Buyer shall have no obligations to Seller in respect of the canceled portion of this Purchase Contract. Buyer may, for its convenience terminate any order for Goods and/or Services under this Purchase Contract in whole or in part, at any time by giving notice to Seller in writing. Seller will thereupon immediately stop work on such order or the terminated portion thereof and notify any subcontractors to do likewise, in which case, if Seller is not in breach of this Purchase Contract or violation of any law, Seller shall be entitled to reimbursement for its actual costs necessarily incurred up to and including the date of termination for any work performed in compliance with this Purchase Contract and not defective or non-conforming, such costs to be determined in accordance with recognized accounting principles and a reasonable profit on such work done prior to such termination at a rate not exceeding the rate used in establishing the original Price for such work. The total thereof shall not exceed the pro rated portion of such canceled work under this Purchase Contract. The provisions of Sections 6, 8, 9, 10, 11, 12, 14, 15, and 18 of this Purchase Contract and this sentence shall survive any termination, expiration or cancellation of this Purchase Contract.

14. **GOVERNING LAW.** This Purchase Contract and all transactions hereunder shall be governed by and interpreted in accordance with laws of the State of Texas, without application of any conflict of laws provisions that would result in the application of the laws of any other jurisdiction. To the extent the U.N. Convention for the International Sale of Goods applies to any transaction hereunder, Buyer and Seller agree that the application thereof shall be excluded.

15. **REFUND.** Seller shall promptly pay, repay, refund, reimburse and indemnify Buyer for (i) any Shipping Costs, and any Taxes except for any Buyer Taxes, and (ii) any Price and/or any Buyer Taxes, or any part of any Price and/or Buyer Taxes, in the event and to the extent that Buyer has paid such Price and/or paid or incurred such Buyer Taxes, or such part of any Price and/or Buyer Taxes, that is not payable and due pursuant to Section 18 of this Purchase Contract or otherwise.

17. **HAZARDOUS GOODS; RECOVERY.** Seller hereby guarantees that no article delivered pursuant to this order is a misbranded or banned hazardous substance within the meaning of the Federal Hazardous Substances Labeling Act. In the event any Good and/or Services furnished hereunder shall become a banned hazardous substance, including, without limitation, under the Federal Hazardous Substances Labeling Act, or be the subject of a recall or market withdrawal under applicable law or determined necessary or advisable by Buyer, including, without limitation, under the Food, Drug & Cosmetic Act, the Federal Hazardous Substances Labeling Act, or the Consumer Product Safety Act, Seller agrees to take back at its cost all existing stocks in Buyer's and/or Buyer's dealers' or customers' possession and/or dealers' customers' possession ("Recovery"), and will promptly reimburse and pay Buyer for all such returned Goods and/or Services at the price and all Taxes originally paid by Buyer to Seller, plus all Shipping Costs and Taxes for return shipment to Seller as well as any and all reasonable costs incurred by Buyer in returning such Goods and/or Services from its dealers, customers and/or its dealers' customers. The determination as to when such Recovery shall be instituted as well as the extent and administration of such Recovery shall be within Buyer's sole discretion, provided that Buyer shall comply with all applicable laws. In the event that Buyer acquires information which requires notification

under Section 15 of the Consumer Product Safety Act, it is understood that Buyer will promptly notify the Consumer Product Safety Commission and Seller, without incurring any liability to Seller as a result of such notification.

18. **ENTIRE AGREEMENT.** The conditions, terms and provisions contained in this Purchase Contract and the information on the face of this Purchase Contract and/or the attached purchase order (except if and to the extent any such information conflicts, contradicts, changes, alters or modifies any condition, term or provision in this Purchase Contract) constitute the entire agreement between Buyer and Seller and shall supersede all previous communications, representations, agreements or understandings, either oral or written, between the parties hereto with respect to the subject matter hereof. Any amendment, modification, alteration, variation or extension of this Purchase Contract must set forth in a writing which specifically referring to this Purchase Contract and signed by each party through its duly authorized officer, and the provisions hereof not specifically amended thereby shall remain in full force and effect. No other agreement, understanding, provision, term or condition, including, without limitation, in any acknowledgement or acceptance by Seller, invoice, bill of lading, shipping document, correspondence, document, statement or expression (whether written, oral or by conduct or silence), shall amend, modify, alter, vary, or extend this Purchase Contract or any term, provision or condition herein or be binding upon either party hereto. Any headings and titles in this Purchase Contract are for the purpose of reference only and shall not in any way affect the interpretation or construction hereof.