

TERMS AND CONDITIONS TO PURCHASE ORDER

- 1. ACCEPTANCE.** This Purchase Order may be accepted only by (i) Seller beginning to perform the services set forth on the face of this Purchase Order; or (ii) the delivery by their specified delivery date of the goods ordered on the face of this Purchase Order; or (iii) Seller's commencement of work on the goods that are subject to this Purchase Order. Any acceptance of this Purchase Order is limited to acceptance of the express terms of the offer contained on the front and back hereof and in any other document(s) fully identified on the face hereof and specifically incorporated herein by reference thereto. Any proposal for additional or different terms or any attempt by Seller in Seller's acceptance to vary, to any degree, any of the terms of this offer is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the services, description of goods, quantity, price, or delivery schedule of the goods and/or services but shall be deemed a material alteration thereof and this offer shall be deemed accepted by Seller without such additional or different terms. If this Purchase Order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to acceptance of the express terms contained herein. Any additional or different terms or any attempt by Seller to vary in any degree any of the terms of this Purchase Order shall be deemed material and are objected to and rejected. No conditions, custom, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. Mistakes in prices, discounts, specifications, delivery schedules or other terms and any noticeable discrepancies in quantities or sizes are to be reported immediately by Seller to Buyer and Seller shall immediately remedy such mistakes by refunding incorrect charges to Buyer or correcting such other discrepancies, unless otherwise directed by Buyer.
- 2. PRICING.** Pricing is inclusive of applicable taxes, freight, packaging, insurance, handling and all other charges, whether similar or dissimilar, unless otherwise indicated on the face of this Purchase Order. Seller shall indemnify, defend and hold harmless Buyer from all liability for any applicable taxes and contributions and for interest and penalties relating to or arising from failure to pay them.
- 3. DELIVERY/PERFORMANCE.** Time is of the essence in the delivery of goods, in the performance of services and in any other performance required of Seller hereunder. Unless otherwise set forth on the front of this Purchase Order, goods shall be shipped F.O.B. Buyer's facility, and risk of loss and transfer of title shall pass to Buyer upon delivery at Buyer's facility. If goods are not delivered by the delivery date set forth on the face of this Purchase Order, Seller shall pay Buyer the actual damages sustained by Buyer as a result of such delay. In addition to all other rights and remedies available to Buyer (including termination of the Purchase Order), Buyer shall have the option to elect to reduce the purchase price set forth on the face of this Purchase Order by said amount at the time payment is due to Seller hereunder. If Seller is required to fabricate or prepare any item or perform any services hereunder and Seller has not commenced or diligently pursued such fabrication, preparation or services such that Buyer shall have reason to believe that Seller will not be able to complete the same within the time requirements set forth on the face of this Purchase Order, Buyer shall have the right to terminate this Purchase Order by sending written notice thereof to Seller, effective on the date of such notice, in which event Buyer shall not be liable to Seller under or in connection with this Purchase Order, except for services received as of the date of termination.
- 4. INSPECTION/REJECTION.** Seller shall permit authorized representatives of Buyer (i) to inspect Seller's facilities and records to ensure compliance with the terms of this Purchase Order, (ii) to inspect the progress of goods or services ordered, and (iii) to prepare analytical data for quality control purposes with the assistance of Seller's personnel. Buyer may inspect and reject all nonconforming goods and/or services until such goods and/or services have been accepted by Buyer, without regard to whether payment has been made and without regard to whether the goods and/or services have been delivered to Buyer, are located on Buyer's property or are being used by Buyer in a manner not inconsistent with Seller's ownership of the goods and/or services. Buyer may choose, at Seller's risk and expense, to either hold nonconforming goods pending Seller's instructions or ship them to Seller's address first shown on the face of this Purchase Order.
- 5. WORK ON PREMISES.** If Seller shall be performing work on Buyer's premises, Seller shall provide and pay for all materials, labor, tools, water, power and other items necessary to complete the work, unless expressly stated otherwise on the face of this Purchase Order. Seller shall adequately protect the work and surrounding premises and the public in its access to Seller's work site. Seller shall, while on Buyer's premises, comply with Buyer's rules and regulations, of which Seller has been provided written notice. Buyer shall have the right to request the removal of any employee of Seller who Buyer reasonably deems to be unsatisfactory. In those states where cloth rags are not permitted on mine premises, Seller shall not use any cloth rags in connection with the work to be provided under this Purchase Order. Buyer shall have the right, but not the obligation, to inspect the work to insure that the terms and provisions of this Purchase Order are being complied with by Seller. Seller shall keep Buyer's premises free from accumulation of waste material and rubbish and in full compliance with any applicable law or regulation. Upon the completion of the work, Seller shall remove all rubbish, equipment and surplus materials from Buyer's premises. Notwithstanding the foregoing, Seller shall not remove any of Buyer's property, including any proprietary or confidential information, from Buyer's premises without prior written consent of Buyer. Buyer advises and Seller acknowledges that Buyer's premises may contain rough, uneven and unstable terrain and both natural and artificial conditions and activities involving risk of harm, and that active mining, construction, oil and gas, ranching, farming and other operations may be conducted on or in vicinity of such lands. Buyer has not inspected such lands and operations for the purposes of this Purchase Order and has not taken any efforts to discover or make safe dangerous conditions or activities for purposes of Seller's performance hereunder. Buyer makes no representation regarding the condition of such lands, except that they may contain natural and artificial hazards. As a material consideration, Seller, for itself and its employees and agents, assumes the risk of dangers connected with the lands and these operations and the responsibility for inspecting the premises for unsafe conditions, taking the necessary safety precautions for protection of Seller and Seller's employees and agents and assuring a safe place for performance of its work hereunder, and releases Buyer from that responsibility and its negligence in connection therewith. Nothing in this Purchase Order shall be construed to require Seller to perform services on Buyer's premises under conditions which in Seller's judgment present undue risks of harm. If in Seller's judgment the services should not proceed due to the presence of unsafe conditions; the correction of which may require changes or alterations in Buyer's operations or property, Seller shall suspend such performance until Seller and Buyer agree on the corrections or alterations necessary for the safe performance hereunder.
- 6. WARRANTIES.** Seller represents and warrants that all goods and/or services will conform to all written proposals and descriptions as well as to any drawings, specifications, samples or models furnished by Buyer or furnished by Seller and approved by Buyer. Seller further represents and warrants (i) that title to all goods sold and services supplied shall be unencumbered; (ii) that all goods shall be merchantable and fit for their intended purposes and shall be new, not refurbished or reconditioned, and of a good quality, free from defects in workmanship, material and design and free from foreign materials and other defects in composition and (iii) that all services shall be free from defects in workmanship and shall be rendered in a good and workmanlike manner by skilled personnel qualified in their respective trades. If professional design services or certifications by an engineer are required for provision of the goods or performance of the services under this Purchase Order, Seller represents and warrants that such services and/or certifications are provided by a properly licensed engineer whose signature and seal shall appear in all drawings, calculations, specifications, shop drawings and other documents prepared by such professional. Buyer reserves the right to return, at Seller's expense, any defective or nonconforming goods, services or related items. If requested by Buyer, Seller will, at Buyer's option, refund the purchase price of such non conforming goods, services or related items, or correct or replace, at Seller's expense, the defective or nonconforming goods, services or related items immediately after notice by Buyer to Seller. All costs in connection with or as a result of such defective or non conforming goods, services or related items, including, without limitation, cost to transport from Buyer to Seller and return shipment to Buyer, will be borne by Seller. If Seller fails to repair or replace the nonconforming goods, services or related items within the time periods set forth herein, Buyer may repair or replace the defective or nonconforming goods, services or related items at Seller's expense. Rejected or nonconforming goods, services or related items will not be deemed delivered on time unless corrected or replaced goods, services or related items are delivered within the time period applicable to this Purchase Order. These warranties shall not be deemed waived by either Buyer's receipt or acceptance of, nor payment for, the goods and/or services delivered hereunder. Such remedy for warranty defect, however, shall be in addition to all other remedies at law or equity.
- 7. BUYER EQUIPMENT AND MATERIALS.** IF BUYER FURNISHES SELLER ANY EQUIPMENT OR MATERIALS IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER, SUCH EQUIPMENT AND MATERIALS SHALL BE FURNISHED "AS IS" AND WITHOUT ANY WARRANTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller shall have the duty to inspect any such equipment or material and the right to reject any such equipment or materials which are not safe or fit for use in the performance of its services. If Buyer is to prepare or condition the worksite or materials for Seller's performance of its services, such preparation or conditioning shall be done without any warranty of its fitness or suitability for Seller's purposes, and Seller shall have the duty to inspect the worksite and such materials and the right to require additional preparation or conditioning if the worksite or materials are not safe or fit for performance of Seller's services.
- 8. INVOICES/AUDIT.** Buyer shall have no obligation to pay for any item until a proper invoice for the item is received at the "Bill To" address shown on the face of this Purchase Order. Payment terms commence upon receipt of a proper invoice, and Seller may not send its invoice to Buyer until delivery of the applicable goods or completion of the applicable services. The invoice should include: (1) a valid purchase order number, (2) Seller's full name, complete mailing address, contact name, and phone number; (3) Seller's remittance address if different than Seller's mailing address; (4) unique invoice number; (5) invoice date, invoice due date, terms of payment and early payment discount percentage and amount (if offered), and payment due date to qualify for the discount; (6) quantity, description, unit price, extended price, all applicable tax and freight, and total invoice amount; (7) supporting detail/documentation as required by Buyer; and (8) lien waivers, as applicable. Only one purchase order number is permitted per invoice. Unless otherwise agreed by the parties in writing, payment terms are net forty five (45) days from receipt of proper invoice or receipt of products and completed services, whichever occur later. Seller shall permit Buyer and its auditors to examine, during the term of this Purchase Order and for six (6) years after completion of the work performed by Seller, all books, records, supporting documents, files and correspondence of Seller (collectively, "Seller's Records") pertaining in any way to the goods delivered or services performed and the price charged thereon by Seller. Seller will refund, and Buyer may withhold payment of any invoice which is not supported by records and data required by this Purchase Order, or any payment which was not proper under the terms of this Purchase Order. During the term of this Purchase Order, Seller shall provide Buyer, upon Buyer's written request, any and all Seller's Records necessary to demonstrate compliance with this Purchase Order. Notwithstanding the foregoing, Seller acknowledges and agrees that so long as Buyer makes payment of the Seller's invoice in full (or any invoice which bears Seller's names and logo and has all appearances of Seller's invoice), Buyer shall have satisfied its payment obligations related to such invoice in full and Seller agrees to release and discharge Buyer from any other payment obligation related thereto.
- 9. CHANGES.** Buyer may make unilateral changes at any time to (i) the services to be performed; (ii) the goods to be delivered; (iii) the delivery date of the goods; (iv) the date of performance of the services; or (v) the goods to be specially manufactured, provided, however, to the extent such change materially affects the price or delivery date of the applicable goods and/or services, Buyer shall make an equitable adjustment in the price, delivery date, or both, to reflect the change. No substitutions shall be made without the prior written approval of Buyer. Seller agrees that it will not make any process or manufacturing changes which might affect the performance, characteristics, reliability or life of the goods or services without prior written approval of Buyer. Notwithstanding the foregoing, Seller must direct any and all requests to update any agreed upon or otherwise utilized payment process (e.g., accounts/wire instructions, updates to lock box) to Buyer and receive a confirmed receipt from Buyer of any change to utilized payment process prior to the parties accepting any changes to the payment process; provided, however, all payments and invoices processed pursuant to any previously-agreed upon or otherwise utilized payment process prior to such an update will not be a breach of the Purchase Order.
- 10. INDEMNITY.** Seller will indemnify, defend and hold harmless Buyer, its parents, subsidiaries, affiliates and related companies, and their officers, directors agents, representatives and employees, and each of their respective successors and assigns (the "Indemnified Parties") against any and all suits, claims, losses, demands, damages, liabilities, costs and expenses (including reasonable attorneys' fees and other costs of defending any action) ("Losses") which such Indemnified Parties may sustain or incur (i) in connection with a breach of (A) any representation, warranty, or undertaking made by Seller in this Purchase Order, (B) the Confidentiality/Non-Publicity (Section 20) or Software (Section 21) provisions set forth herein or (ii) in connection with the performance, design, development, sale, use or delivery of the goods or services (as applicable), whether the suit, claim or demand be based upon a theory of breach of contract or warranty, negligence, strict liability, other tort, infringement or any other legal theory, or (iii) as a result of any suit, claim or demand under any environmental, transportation, health, safety or other laws, rules, regulations or requirement caused by or resulting from the goods or services or any acts or omissions of Seller in the performance of this Purchase Order; provided, however, that Seller shall not indemnify the Indemnified Parties for Losses under (i), (ii) or (iii) to the extent caused by the negligence or willful misconduct of the Indemnified Parties. If Seller's performance requires Seller, its employees, agents or representatives to perform services on the property of Buyer or its agents, Seller will indemnify, defend and hold harmless the Indemnified Parties against all Losses arising out of such performance, Seller agrees that it will, when requested and given reasonable notice of the pendency of any such suits, claims or demands, assume the defense of the Indemnified Parties against any such suits, claims or demands. Additionally, Seller expressly and specifically waives all immunity that may be afforded to Seller under the workers' compensation laws of any state or jurisdiction to the extent permitted by law.
- 11. INSURANCE.** Seller shall obtain and maintain in force at its own expense, and furnish to Buyer or Buyer's representative a Certificate of Insurance that reflects; the following insurance coverages:
 - (i) Workers' Compensation and Occupational Disease Disability insurance as required by the laws of the state where the work is being performed.
 - (ii) Employers' Liability insurance with limits of \$1,000,000 each accident and each employee disease.
 - (iii) Comprehensive Automobile Liability insurance with limits of \$1,000,000 Bodily Injury and Property Damage combined single limit.
 - (iv) Comprehensive General Liability insurance, with per occurrence limit of \$5,000,000; including Operations, Protective Products/Completed Operations, Broad Form Property Damage and Contractual Liability coverages.All insurance policies must contain an unqualified provision that the insurance carrier will give Buyer thirty (30) days' prior written notice of any cancellation, change or lapse of such policy(s). The automobile and general liability policies shall name Buyer, its parents and/or members, subsidiaries, affiliates and related companies as additional insureds. The workers' compensation and employers' liability shall contain a waiver of subrogation by the Seller and its insurance company against the foregoing additional insureds (to the extent permitted by applicable state law). The parties hereto acknowledge that the Seller's insurance shall be the primary coverage under this Purchase Order. Such insurance policies shall be carried by insurers which are authorized to do business in the state where services or goods are provided and which are rated not lower than B+ VI in the most recent edition of A.M. Best's Guides.
- 12. SECONDARY BRAKES; GROSS VEHICLE WEIGHTS.** Any vehicle driven by an employee, agent or subcontractor of Seller onto Buyer's premises shall be equipped with a secondary brake retarding system that will provide the operator of the vehicle an additional method of slowing the vehicle in the event the vehicle's primary braking system malfunctions. Examples of acceptable secondary retarding systems include, but are not limited to, drive shaft brakes, exhaust brakes, "Jake" brakes, manual transmissions (low gear), automatic transmissions (low gear provided that they are not equipped to shift into a higher gear at a high engine RPM), converter retarders and ground engagement implements. All vehicles driven by an employee, agent or subcontractor of Seller that enter onto Buyer's premises shall not exceed the gross vehicle weight rating specified by the original manufacturer of that vehicle. Buyer shall have the right, but no obligation or duty, to inspect the vehicles for compliance hereunder. Buyer shall have the right to prohibit any vehicle from entering onto its premises if that vehicle is not properly equipped with a secondary brake retarding system or it exceeds its manufacturer's gross vehicle weight rating. Any vehicle driven on the premises shall observe all posted speed limits and traffic control signs or devices. The failure of any agent, employee or subcontractor of Seller to comply with the foregoing may result in the driver being banned from Buyer's premises.
- 13. AVAILABILITY OF PARTS.** For a period of five (5) years after full performance of this Purchase Order, Seller shall make available to Buyer repair parts for all goods purchased under this Agreement. For the first three (3) years, prices for repair parts shall remain at current prices at time of performance of this purchase order, thereafter, prices shall be mutually agreed upon by the parties. Seller shall give one (1) year prior written notice to Buyer in the event Seller will be unable to supply such parts and will use its best efforts to assist Buyer in obtaining a reasonable alternative source of supply in accordance with this Agreement, provided, however, Seller's inability to provide such parts shall be a default of this Agreement. Without waiving any of its rights or remedies under this Agreement or by law Buyer may, at its sole option, require Seller to provide Buyer with drawings required to either manufacture or buy such parts and technical information or any other intellectual property or license or other rights Seller may have so that Buyer can manufacture or obtain such parts from other sources. The technical information shall include, by example and not by way of limitation: (a) manufacturing drawings and specifications of raw materials and components comprising such parts; (b) manufacturing drawings and specifications covering special tooling and the operation thereof; (c) a detailed list of all commercially available parts and components purchased by Seller on the open market disclosing the part number, name and location of the supplier and price lists,

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for the purchase thereof; (d) in depth test specifications and procedures describing the methods of testing and repairing the material, and (e) instruction consisting of know how and show how necessary to fully use (a) through (d).

- 14. COMPLIANCE WITH LAWS.** Seller represents and warrants that all goods delivered and services performed pursuant to this Purchase Order shall comply with all applicable federal, state, local and tribal, and foreign, multi-national, and international laws, rules, regulations, ordinance, treaties and other requirements of federal, state, local and tribal governments and agencies thereof, including but not limited to safety, labor, privacy, data protection, and environmental laws. Notwithstanding any other provision set forth herein, Seller shall indemnify and hold harmless Buyer, its directors, officers and employees from all other penalties, fines, and other charges resulting from violations or alleged violations by Seller, of such laws, rules, regulations, ordinances, treaties and other requirements.
- 15. INDEPENDENT CONTRACTOR.** Seller is an independent contractor of Buyer, and nothing herein contained or implied will at any time to be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture as between Seller and Buyer. Seller, solely and exclusively, shall employ, direct, supervise, discharge and fix the compensation and working conditions and practices of its employees, shall be solely responsible for their payment and shall comply with all laws pertaining to employees. Seller, solely and exclusively, shall be responsible for, and shall exercise complete control of its employees in all matters, disputes or grievances arising out of or in any way connected with Seller's operations, including, without limitation, those involving safety matters. Seller, solely and exclusively, shall be responsible for, and, at its sole cost and expense, shall pay for and maintain all private and group employee benefits, plans and programs, including, without limitation, all life, accidental death and dismemberment, health, sickness, accident benefits, whether insured or not, which Seller may offer to its employees; and with regard thereto shall indemnify and save harmless Buyer from any and all claims and liability. Seller shall maintain insurance for, or otherwise guarantee, the payment of federal black lung benefits to its employees in accordance with the Black Lung Benefits Reform Act of 1977 and other applicable laws and regulations.
- 16. EQUAL OPPORTUNITY AND PROHIBITION OF SEGREGATED FACILITIES.** Buyer sometimes furnishes supplies or services to U.S. federal agencies and federal corporations, including the Tennessee Valley Authority. In doing so, Buyer may purchase supplies or services from Seller, which are necessary (in whole or in part) for Buyer to perform its obligations with the federal agency or federal corporation. In such instance, both Buyer and Seller may become subject to certain federal requirements concerning Equal Opportunity and Prohibition of Segregated Facilities. By accepting this Purchase Order, Seller agrees that it will comply, to the extent applicable, with the Equal Opportunity and the Prohibition of Segregated Facilities requirements set forth in this Section 16. To the extent this Purchase Order exceeds \$10,000, Seller agrees to comply with Executive Order (E.O.) 11246, and any E.O. amending or superseding this order. E.O. 11246 sets forth a requirement for inclusion in the Purchase Order of an "Equal Opportunity" clause (found at 41 C.F.R. Section 60.1.4). The clause requires compliance with its requirements and the applicable regulations of the Secretary of Labor (including affirmative action requirements under 41 C.F.R. 60.1.40), to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin. In addition, pursuant to this "Equal Opportunity" clause, the Seller agrees that it does not and will not maintain or provide for it employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. "Segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single user rest rooms or necessary dressing or sleeping are provided to assure privacy between the sexes. The Seller further agrees that a breach of this requirement is a violation of the "Equal Opportunity" clause in such Purchase Order. To the extent this Purchase Order exceeds \$10,000, Seller agrees to ensure compliance with Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), and its implementing regulations. Section 503 requires Seller to take affirmative action to employ and advance in employment qualified individuals with disabilities. The applicable Department of Labor (DOL) regulations require compliance with an "Equal Opportunity for Workers with Disabilities" clause (found at 41 C.F.R. 60.741.5). To the extent this Purchase Order exceeds \$10,000, Seller agrees to comply with Executive Order 11141, and its implementing regulations. The applicable TVA regulation regarding E.O. 11141 mandates compliance with a "Discrimination on the Basis of Age" clause (found at 18 C.F.R. 1316.6). Pursuant to this clause, Seller shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age (except on the basis of a bona fide occupational qualification, retirement plan, or statutory requirements). To the extent this Purchase Order exceeds \$25,000 Seller agrees to comply with the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974, as amended (38 U.S.C. 4214), and its implementing regulations. VEVRAA requires the Seller to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans. The applicable DOL regulations require compliance with an "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, Recently Separated Veterans, and Other Protected Veterans" clause (found at 41 C.F.R. 60.250.5).
- 17. PATENTS AND TRADEMARKS.** Seller represents and warrants that all goods supplied and services performed under this Purchase Order shall not infringe on any third party patent, copyright, trade name, trademark or service mark, or other proprietary right. Seller shall at its own expense defend, indemnify and hold harmless the Indemnified Parties from any and all Losses resulting by virtue of any claimed infringement of patents, copyrights, trade secrets, trade names, trademarks, service marks or other proprietary right in connection with the goods supplies or services performed hereunder.
- 18. WORK PRODUCT.** Seller acknowledges and agrees that all materials produced, developed, created or devised by Seller for performance hereunder, including without limitation, work papers, sketches, drawings, designs, samples, models and all other deliverables (collectively, "Work Product") shall be the sole property of the Buyer. Seller expressly acknowledges the parties' agreement that all aspects of the Work Product which may be subject to copyright protection are considered as Works Made For Hire within the meaning of the Copyright Act of 1976 (the "Copyright Act"). In the event and to the extent that the Work Product or any part thereof is found, as a matter of law, not to be a Work Made For Hire under the Copyright Act, Seller assigns to Buyer the sole and exclusive right, title and interest in and to the Work Product without further consideration. Seller agrees to execute any assignments, registrations, certificates or other instruments as Buyer may deem necessary or desirable evidence, establish, maintain, perfect, protect, enforce or defend Buyer's ownership in and to any of the foregoing.
- 19. LIENS; SET OFF.** Seller shall not permit the filing of any mechanic's, materialman's or other lien or claim of any kind against Buyer's lands or improvements on account of labor, materials, fixtures, tools, machinery, equipment or any other thing furnished in connection with this Purchase Order. Buyer shall have the right to withhold final payments to Seller until such time as Seller delivers to Buyer lien waivers or releases and proof of payment in such form and at such times as Buyer shall specify. Buyer shall have the right of set off against Seller any amount owed by Buyer to Seller against any amount due to or become due to Buyer or any affiliate from Seller, whether under its Purchase Order or under any other agreement between Buyer and Seller, whether now or hereinafter in effect.
- 20. CONFIDENTIALITY/NON PUBLICITY.** Without Buyer's prior written consent, Seller shall not publish or communicate to others, via news release, public announcement, denial or confirmation, the existence, subject matter or the terms and conditions of this Purchase Order. Seller agrees that Seller will (i) keep confidential all non-publicly available information or any personally identifiable information disclosed to Seller by Buyer or any of Buyer's affiliates or otherwise obtained by Seller ("Buyer's Information") in connection with this Purchase Order and (ii) disclose Buyer's Information only to those of its employees or subcontractors that (A) will be directly concerned with performance under this Purchase Order and (B) are subject to the same confidentiality obligations as set forth herein. Seller agrees that Buyer or any of Buyer's affiliates shall remain the sole and exclusive owner of all right, title, and interest in Buyer's Information. Seller hereby represents and warrants that it will not, without the express, prior written consent of Buyer, sell, rent, release, disclosing, disseminate, make available, transfer, or otherwise use or communicate orally, in writing, or by electronic or other means, Buyer's Information for any purpose other than that contemplated by this Purchase Order. Seller agrees that it will implement and maintain a written information security program and commercially reasonable measures to protect the confidentiality, integrity, and availability of all Buyer's Information. During the duration of this Purchase Order, Seller agrees that within three (3) business days after receipt of a written request from Buyer, Seller shall, at its own cost and expense, provide Buyer access to Buyer Information, and/or amend, correct, disclose and deliver to Buyer by mail or electronically (and if provided electronically in a portable and, to the extent technically feasible, in a readily useable format), or delete Buyer Information. Within thirty (30) after termination of this Purchase Order, Seller shall, at Buyer's request, either return all Buyer Information and the copies thereof to Buyer, or destroy and certify the destruction of, all Buyer Information, unless such destruction is otherwise prohibited by law. The parties agree Buyer's Information shall be considered commercial secrets qualified for protection under applicable law. Notwithstanding the foregoing, Seller may disclose Buyer's Information that must be disclosed to any government, any agency or department thereof, or any stock exchange to the extent required by law, provided Seller shall immediately notify of such requirement and the terms thereof prior to such disclosure so that Buyer may seek an appropriate protective agreement or order prior to the disclosure. Seller shall not, without the prior written consent of Buyer, use or allow the use of, whether in writing or in oral form, Buyer's names, trademarks, logos, publications, photographs of Buyer's facilities or equipment, or Seller and Buyer's business relationship in connection with marketing or business activity. Any violation of this provisions shall be deemed a material breach of this Purchase Order. The obligations under this section with survive termination of this Purchase Order and will remain binding on Seller, its respective affiliates, successors and assigns forever. Seller shall promptly and without delay provide written notice to Buyer if there has been an actual or a reasonably suspected breach of confidentiality of any of Buyer's Information in the possession, custody, or control of the Seller or its subcontractors. Without limiting any other provisions set forth herein, Seller must at its own cost cooperate as requested by Buyer in connection with an actual or a reasonably suspected breach of confidentiality (including internal investigations or enquiries or those conducted by a regulator) and in relation to any data breach notification requirements. Unless otherwise required by law or set out herein, Buyer controls any public notifications in relation to data breaches.
- 21. SOFTWARE.** If the goods contain firmware or other embedded software (collectively, "Firmware") or stand-alone software is provided for use in conjunction with the goods ("Stand Alone Software") (the Firmware and Stand Alone Software collectively being referred to herein as the "Software"), Seller grants to Buyer an irrevocable, paid up, royalty free, worldwide license to use such Software for general purposes for the life of such goods. If the goods are sold or otherwise transferred by Buyer to a third party, the sale or transfer of said goods shall convey to said third party (and subsequent transferees of said good) the foregoing license to use the Software. Seller represents and warrants that the Software (i) has been tested in accordance with industry standards prior to deployment and (ii) does not contain any virus, trojan horse, worm, or other element or device that may permit unauthorized access to, or to disable, erase, or otherwise harm, any of Buyer's computers, systems, software, or other information technology. During the term of the Purchase Order, Seller shall provide to Buyer, free of charge and expense to Buyer, reasonable and timely updates, upgrades, releases, or other adaptations or modifications of the Software that may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.
- 22. BACKGROUND CHECKS; DRUG SCREENING.** Seller shall (i) assign only competent personnel to perform and complete the service, (ii) maintain strict discipline and good order among those personnel, (iii) shall provide proper supervision and direction of their work, and (iv), maintain adequately screened and checked reference of such personnel. Such screening shall include, but not be limited to the following: a criminal background check, drug testing and verification of Seller's employees credentials, work history and reference checks. If, at any time, Buyer determines that the assigned personnel are not performing in accordance with Buyer's reasonable expectation, then upon notification from Buyer, Seller shall meet with Buyer for purposes of addressing and resolving the personnel concerns of Buyer and, upon Buyer's request, shall immediately reassign that person to other work (i.e. work not relating to the services to be provided pursuant to this Purchase Order) and replace that person with a competent person acceptable to Buyer.
- 23. SEPARATE AGREEMENTS.** Buyer may do other work or hire other contractors to perform work at the worksite and Seller shall cooperate with Buyer and other contractors. Seller shall not interfere in any way with the operations of Buyer.
- 24. COMPLETION OF SERVICES.** Completion of the Seller's service under this Purchase Order for billing purposes shall be evidenced by written acceptance by Buyer's representative. Such acceptance may be endorsed on Seller's invoice. Buyer's review, approval, acceptance of, or payment for any of the services required pursuant to this Purchase Order shall not be construed to operate as a waiver of any rights under this Purchase Order or of any cause of action arising out of the performance of this Purchase Order, and Seller shall remain liable to Buyer in accordance with all applicable laws, this Purchase Order and all warranties relating to the performance of any of the services provided under this Purchase Order.
- 25. AMBIGUITIES.** In case of ambiguity, inaccuracy, or incompleteness or in case of any discrepancy between the services provided hereunder and the drawings and specifications, Buyer may take interpretations and issue binding instructions relating to these documents, within the general scope, which will be a binding upon both parties and shall be without compensation.
- 26. CANCELLATION/TERMINATION.** Buyer may cancel all or any portion of this Purchase Order at any time by giving notice to Seller. In the event of cancellation of goods, Buyer shall only be liable for the cancellation of any custom made goods for which Buyer does not take delivery. Buyer's liability for such goods shall be the less of (i) Seller's actual price for raw materials, components, work in progress and any finished units on hand at the time of such cancellation that are attributable to the cancelled portion of the Purchase Order, or (ii) the contract price per finished unit after giving effect to any discount Buyer would otherwise be entitled to, for the cancelled portion if the Purchase Order. In the event of cancellation of services, Buyer's liability shall be the lesser of: (i) Seller's actual cost of the services rendered prior to termination, or (ii) the contract prices for the service cancelled. If any hourly or other time based rate for services is specified in this Purchase Order, such rate shall be used in determining Seller's actual costs. In no case shall Buyer be liable for Seller's lost profits as a result of such cancellation. Upon receipt of a cancellation notice, Seller shall, unless otherwise directed, cease work and follow Buyer's directions as to disposal of work in progress and finished goods. **THE FOREGOING STATES BUYER'S ENTIRE LIABILITY FOR CANCELLATION.** This Purchase order may be terminated by Buyer or Seller at any time immediately upon written notice in the event of the other party's material breach of any term or provision of this Purchase Order or upon the occurrence of any of the following events: (a) such other party makes an assignment for the benefit of creditors, or is subject to any voluntary or involuntary insolvency or bankruptcy proceedings, or becomes unable to meet its obligations as they mature; (b) such other party makes any materially false or misleading statement, representation or claim; (c) such other party fails to prosecute the work so as to endanger performance of this Purchase Order, and/or (d) dissolution or liquidation of such other party. If this Purchase Order is cancelled or terminated due to an event caused by the Seller or resulting from Seller's acts or omissions. Buyer may complete Seller's performance by such reasonable means as Buyer determines, and Seller shall be responsible for, and shall indemnify Buyer against any damages and reasonable costs, including, without limitation, attorneys' fees, incurred by Buyer as a result thereof.
- 27. FORCE MAJEURE.** Buyer and Seller shall not be liable for any delay or failure of performance that is beyond the reasonable control of such party and without its fault or negligence due solely to acts of God; provided, the affected party shall have given the notice to the non affected party of any such cause for delay or anticipated delay promptly following the commencement thereof and shall have used the affected party's best efforts to perform as expeditiously as possible. If Buyer believes that the delay or anticipated delay in Seller's deliveries may impair Buyer's ability to meet its production schedules or may otherwise interfere with Buyer's operations, Buyer may at its option, and without liability to Seller, immediately terminate this Purchase Order.
- 28. GENERAL.** Seller shall not assign or transfer this purchase Order without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Sections 2, 3, 3, 5, 6, 7, 8, 10, 11, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28 and 29 shall survive termination or expiration of this Purchase Order. Except as set forth in Section 9, this Purchase Order shall not be amended, altered or modified except by a single instrument signed by representatives of Seller and Buyer, which instrument must expressly state that it undertakes to amend, alter or modify this Purchase Order. Except as otherwise specifically set forth herein, this Purchase Order is the entire agreement between the parties about the goods and/or services described herein and there are no other written or oral agreements that cover the subject matter of this Purchase Order. All remedies of Buyer are cumulative and any remedies stated in this Purchase Order are in addition to and do not exclude any remedies allowed by law. Further, Seller objects to and rejects any attempt by Seller to limit its liability under this Purchase Order in any many beyond any limitations are required by applicable law. No waiver of any default by either party shall act as a waiver of a subsequent or different default. Section headings are for convenience only and shall have no legal or interpretive effect. In interpreting this Purchase Order, no presumption or interference shall be deemed to arise for or against either party due to the preparation of this document. This Purchase Order

TERMS AND CONDITIONS TO PURCHASE ORDER - continued

shall be governed by the laws of the state of Missouri, without regard to its conflicts of laws principles, and, to the extent relating to goods sold hereunder, by the Uniform Commercial Code applicable thereunder. The parties agree that as to any dispute arising under or relating to this Purchase Order exclusive jurisdiction and venue shall be in the state courts in the City of St. Louis, Missouri and the Federal District Court for the Eastern District of Missouri. The parties mutually acknowledge and agree that they shall not raise in connection therewith, and hereby irrevocably waive, any defenses based upon venue, inconvenience or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing. Any provisions of this Purchase Order found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Purchase Order.

29. ADDITIONAL AGREEMENT. If Seller and Buyer have entered into a Master Performance Agreement (the "Master Performance Agreement"), pursuant to which Seller and Buyer agreed that the terms and conditions specified therein will apply to the goods or service Seller provides to Buyer, then notwithstanding to the contrary herein, the Master Performance Agreement shall remain in full force in effect, and in the event of any conflict between the terms on the front side of this Purchase Order and the Master Performance Agreement, the terms and conditions of the front side of this Purchase Order shall take precedence, but the terms and conditions of the Master Performance Agreement shall take precedence over these Purchase Order terms and conditions.