

## **1. Acceptance-Agreement.**

Seller's acceptance of any purchase order is limited to Buyer's assent to the express terms contained on the face of this order acknowledgment. Buyer's assent to these terms and conditions shall be conclusively presumed from Buyer's receipt of Seller's acknowledgment without prompt written objection thereto or from Buyer's acceptance of all or any part of the goods or services ordered. Any proposal for additional or different terms, or any attempt by Buyer to vary in any degree any of the terms of this invoice, is hereby objected to and rejected, but such proposal shall not operate as a rejection of Buyer's offer unless such variances are in the terms of the description, quantity, price or delivery of the goods, but shall be deemed a material alteration thereof, and the terms of this invoice shall be deemed accepted by Buyer without said additional or different terms. If this invoice shall be deemed an initial offer, Buyer's acceptance is limited to the express terms contained on the face and back hereof.

## **2. Intellectual Property.**

If the goods sold hereunder are to be prepared for manufacture according to Buyer's specifications, Buyer shall indemnify Seller against any claims or liability for infringement or misappropriation of any patent, trademark, copyright, trade secret, or any other intellectual Property right, on account of such manufacture. Except as provided in the preceding sentence, Seller's obligation to Buyer shall be to reimburse Buyer for damages awarded against it as a result of any intellectual Property infringement or misappropriation action, conditioned on the following:

- a. Seller must be notified promptly in writing by the Buyer of any notice of such claim.
- b. Seller may, at its option, participate in the defense of such an action, and, if Seller does participate, it will have sole control of the defense in any action on such claim and all negotiations for its settlement or compromise.
- c. Should the Seller's products become, or in the Seller's opinion be likely to become, the subject of a claim of infringement or misappropriation, the Buyer will permit the Seller at Seller's option, to replace or modify the same so that it becomes not infringing or to grant Buyer a credit for such products as depreciated and accept its return.

## **3. Delivery.**

Title and Shipping Dates. Unless otherwise designated on the front of this document, shipments will be F.O.B. Seller's factory. Title to products passes to Buyer upon delivery to the carrier. Buyer assumes all risk and liability for loss, damage or destruction after delivery to the carrier. Unless otherwise mutually agreed upon, the shipping dates are approximate and are based upon prompt receipt by Seller of all necessary information.

## **4. Termination.**

Cancellation of orders once placed with or accepted by Seller can be made only with Seller's consent. Should Buyer, due to good cause, desire to affect the cancellation of an accepted order, Seller will accept such cancellation on the following basis: Buyer shall pay the line purchase in full for all articles completed and ready for delivery; Buyer shall pay a percentage of the purchase price on such items as shall not be completed, equivalent to the percentage of completion; and Buyer shall pay in full the cost of unusable materials, special dies, tools, patterns and fixtures provided for the order, and will take ownership and possession of all such items and will be responsible for all labor or other documenting expenses incurred in connection therewith. Invoices covering said cost shall be due and payable immediately upon Seller's acceptance of cancellation. An order may not be canceled at less than 100% of the purchase price if within thirty (30) days of completion. A stop work order will be considered as a cancellation and the provisions of this paragraph will apply. If Buyer purchases goods pursuant to this order for use in a contract with the U.S. Government and the U.S. Government terminates the Buyer's prime contract or a portion thereof for convenience, Buyer shall have the right to terminate only that portion of its contract with Seller which has been terminated by the U.S. Government in its prime contract. In such case, Buyer shall be responsible for those costs outlined above.

## **5. Proprietary Information - Confidentiality - Advertising - Rights in Data.**

Buyer shall consider all information furnished by Seller, which was not previously publicly disclosed by the Seller, to be confidential and shall not copy nor disclose any such information to any other person, nor use any such information for

commercial purposes, nor make copies of such information without written permission from the Seller. Buyer shall not disclose any information relating to the order without Seller's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Buyer to Seller shall be deemed secret or confidential and Buyer shall have no rights against Seller with respect thereto. If the Buyer purchases goods pursuant to this order for use in a contract with the U.S. Government the following rights in data provisions shall apply:

**Limited Rights Data.**

Means data that embody trade secrets or are commercial or financial and confidential or privileged in accordance with FAR 52.227-14 and DFARS 252.227-7013, to the extent that such data pertains to items, components, or processes developed at private expense by Seller, including minor modifications.

**Protected Disclosure.**

Both parties agree to protect from disclosure and keep as confidential and proprietary any Limited Rights Data, as defined above, received from the other party. Both parties agree to protect from disclosure and keep as confidential and proprietary any Limited Rights Data, as defined above, received from the other party. Both parties agree that such data will not be used or disclosed for any purpose except in performance of this order without written permission signed by an officer of Seller.

**Rights in Data.**

- a. Seller is not obligated to disclose or deliver Limited Rights Data, as defined above, to the Buyer or Government, nor is Seller obligated to license such data for use by the Buyer or Government. No employee of Seller has the authority to make any agreement, express or implied, providing for the delivery or disclosure of such information, without written permission signed by an officer of Seller.
- b. Buyer will take all steps required by DFARS 252.227-7013 (Oct. 1988) to recognize and protect Seller's rights in technical data. Where there is a requirement in Buyer's prime contract for delivery of Limited Rights Data, as defined above, Seller may fulfill its obligation under such a requirement by submitting such data directly to the Government.
- c. Notwithstanding paragraph (a) of this clause, Seller may affix the following "Limited Rights Legend" to any Limited Rights Data delivered under this contract. Technical data marked with this restriction shall not be released or disclosed outside the Buyer or Government or used by the Buyer or the Government for manufacture, in accordance with the provisions of DFARS 252.227-7013, without written permission, signed by an officer of Seller.

**Limited Rights Legend**

Contract No. \_\_\_\_\_  
Subcontract No. \_\_\_\_\_ (where applicable)  
Contractor \_\_\_\_\_  
Subcontractor \_\_\_\_\_ (where applicable)

The Limited Rights subject to this restriction are not subject to an expiration date. The restrictions governing the use and disclosure of technical data marked with the legend are set forth in the definition of "Limited Rights" as contained in the clause of DFARS 252.227-7013 of the contract listed above. This legend, together with the indications of the portions of this data are subject to Limited Rights, shall be included on any reproductions hereof.

(d) Prior delivery by Seller of Limited Rights data with omitted or incorrect markings shall not impair Seller's right to have the appropriate Limited Rights Legend affixed to qualifying data at Seller's expense within a reasonable time after delivery. The Buyer and Government shall treat such data after marking according to the restrictions contained in paragraph (c) of this clause.

## **6. Changes.**

Seller shall have the right at any time to make changes in drawings, designs, 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 and this agreement shall be modified in writing accordingly. Buyer agrees to accept any such changes subject to this paragraph. If Buyer purchases goods pursuant to this order for use in a contract with the U.S. Government and the U.S. Government institutes changes in its contract with the Buyer requiring changes in this order, Buyer shall be permitted to make only such changes in this order as necessary to comply with changes instituted by the U.S. in its contract with the Buyer. In such case, if such changes cause an increase in the cost or time required for performance, Seller shall be entitled to an equitable adjustment.

## **7. Warranty/Remedies.**

Seller warrants that its products will be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery. Seller further warrants that its products will conform to drawings and specifications mutually agreed upon in writing. Written notice of any claimed defect must be given to Seller within thirty (30) days after such defect is or should have been discovered. Buyer must return any product claimed to be defective along with a referenced preassigned Return Material Authorization number (RMA). After receipt of the returned material and verification of the claimed discrepancy, Seller will repair, or, at its option, replace at its factory, the product or component part thereof if it is determined by Seller to be other than as herein warranted, and such replacement parts shall be shipped subject to the terms and conditions which govern the original sale. Transportation charges covering any defective product returned shall be at Seller's expense; however, transportation charges covering any product returned which proves not to be defective shall be at Buyer's expense. This warranty does not extend to (1) any losses due to misuse, accident, abuse, neglect, normal wear and tear, or improper installation, maintenance or application, (2) products that have been repaired or altered outside of Seller's factory unless authorized in writing by Seller or unless such installation, repair or alteration is performed by Seller, or (3) any labor charges for removal and/or replacement of the nonconforming or defective product or part thereof. Buyer will save Seller harmless from all losses, damages, costs and expenses, of whatsoever nature, including attorney's fees, resulting from, or in any way connected with product problems not related to defects in material and workmanship. THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ARISING BY OPERATION OF LAW OR OTHERWISE, AND IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. This warranty extends to Buyer only and not to Buyer's customers or users of Buyer's products. In no case will Seller defend, indemnify or hold Buyer harmless against claims, liabilities, or expenses arising out of or resulting in any way from any alleged problem with the goods purchased hereunder.

## **8. Force Majeure.**

Seller shall not be liable for delays or failure in performance arising from strikes or other labor difficulties, labor shortage, fire, flood, war, breakdowns or failure of plant machinery or equipment, delays in or lack of transportation, governmental priorities or allocations, delays of suppliers, or any cause beyond the reasonable control of the Seller. In the event of delay or failure of performance not excused in accordance with the preceding sentence. Seller's liability shall not exceed the excess costs, if any, reasonably incurred by Buyer in procuring the undelivered portion of the material ordered from other sources.

## **9. Price/Credit Terms.**

All prices quoted are subject to change, without notice, at any time prior to Seller's acceptance of Buyer's purchase order to prices prevailing at time of acceptance. If there is a delay in completion of shipment of said order due to any change requested by Buyer or as a result of any delay on Buyer's part in furnishing information required for completion of the order, the price agreed upon at the time of acceptance of order is subject to change. Prices are F.O.B. shipping point and are exclusive of all taxes - Federal, State or Local. There will be added to the quoted price any sales or other tax or duty Seller may be required to collect or pay upon the sale of equipment quoted. If such amount is not included in invoice for the

equipment, it may be invoiced separately later. Invoices not paid in accordance with terms are subject to interest charges at the rate of one and onehalf percent (1-1/2%) per month, unless prohibited by law, in which event invoices will be subject to interest charges at the maximum legal rate. Minimum invoice charge is \$100.00 plus transportation charges. Additional charges will be made for export packaging.

To those customers and prospective customers whose credit is satisfactory to the company, payment terms are net thirty (30) days cash from date of invoice. If Buyer fails to pay any invoice within thirty (30) days of invoice date, or if the financial condition or credit of Buyer becomes unsatisfactory to Seller, Seller at its option and without affecting any other lawful remedy, may change the terms of payment or suspend work and further deliveries, or both, until Buyer provides security or other assurances of performances as demanded by Seller.

Failure or refusal of Buyer to provide assurances within ten (10) days after a request by Seller will constitute a repudiation, at Seller's discretion of the entire contract. By submitting any purchase order in writing, either prior to subsequent to the date of Seller's order acknowledgment. Buyer represents that it is solvent for the purposes of UCC Section 2-702, and that it is not insolvent as defined by UCC Section 1-201(23). Buyer will notify Seller promptly if Buyer becomes insolvent. The transmission of any writing by Buyer to Seller during the course of performance of the agreement will be understood to constitute a written representation of continued solvency for the purposes of UCC Section 2-702(2).

Buyer also grants to Seller a security interest in all goods sold pursuant to this agreement, replacements or substitutions therefore and all proceeds thereof. Should Buyer default in any of its obligations under this agreement, Seller shall have all of the remedies of a secured party under the Uniform Commercial Code of Ohio. Seller may file a copy of this agreement as evidence of its security interest. Buyer shall pay all expenses of repossession and sale, including reasonable attorneys fees.

## **10. Tooling.**

Any equipment (including all jigs, dies and tools) which Seller constructs or requires for use in the production of materials for Buyer, shall be and remain Seller's property and in Seller's possession and control and any charges, therefore, shall be for the use of such equipment. Seller will use its best efforts to handle and store carefully while in its possession any materials or equipment owned or furnished by Buyer, but Seller shall not be liable for damage or loss thereof. When for three (3) consecutive years no orders have been received requiring the use of any equipment or materials referred to in this paragraph, Seller may dispose thereof as it sees fit, without liability to the Buyer provided written notice is submitted thirty (30) days in advance. Tooling required for the manufacture of custom designs may be quoted separately as a one-time charge to Buyer. Charges will be invoiced upon completion of manufacturer of the tooling.

## **11. Standard Quantity Tolerance.**

Seller reserves right to make shipments in quantities it deems appropriate. Items may be shipped plus or minus order item quantity if necessary to meet the shipping needs of the Seller.

## **12. Export Control Regulations.**

Buyer understands that Seller and the products are subject to the United States Export Administration Act, the Trading with the Enemy Act, and other laws and regulations of the United States of America (collectively the "Regulations"), which regulations are enforced, inter alia, by the United States Department of Commerce. The Regulations, in part, prohibit export or diversion of the products to certain countries. Buyer agrees to abide by all Regulations, including those concerning the resale and disposition of the products. Buyer warrants that it will not sell, transfer or support, directly or indirectly, or assist in any sale or transfer of any products or product technology in countries or to users concerning which such sale, transfer or support is not permitted under applicable regulations. Buyer shall defend, hold harmless and indemnify Seller for any damages resulting to Seller from a breach of this Paragraph 12 by Buyer.

**13. Inspection of Records - Defective Pricing Indemnifications.**

If Seller is obligated to supply cost and pricing data in order to comply with the provisions of the Truth-in-Negotiations Act and/or provisions of the Federal Acquisition Regulations, such data shall be supplied directly to the Government or its representatives and the Buyer shall have no right to audit, examine or review the books, records or operations of Seller unless authorized in writing by an officer of the Seller. Under no circumstances shall Buyer be entitled to indemnification from Seller for costs incurred or losses sustained by Buyer resulting from allegedly defective data supplied by the Seller. If, however, Buyer is contractually entitled to indemnification for allegedly defective data supplied by the Seller, and a contracting officer under a prime contract the Buyer has with the U.S. Government determines that price negotiated in connection with such prime contract was increased significantly because Seller furnished incomplete, inaccurate or non-current cost or pricing data, then the price negotiated in connection with this contract shall be reduced accordingly. However, any such reduction shall exclude profit and/or fee of the Buyer. In the event of a price reduction in accordance with the foregoing, Seller shall be bound to the price reduction only if Seller was promptly notified by the Buyer the decision of the contracting officer reducing the prime contract price. If such decision by the contracting officer is made, Seller shall have the right to demand an appeal of such decision. Buyer shall provide all necessary assistance to Seller to pursue such appeal.

**14. Entire Agreement.**

This invoice and any documents referred to on the face hereof, constitute the entire agreement between the parties. Except as otherwise provided for herein, any changes must be agreed to in writing. No statement, recommendation or assistance made or offered by Seller through its representative to Buyer or its representative in connection with the use of any products sold by Seller shall be or constitutes a waiver by Seller of any of the provisions hereof or affect the obligations of the respective parties under any order received from Buyer as modified by these conditions.