

Purchase Terms and Conditions

1 Products and Parties Covered by the Purchase Order.

- 1.1 Products. These purchase terms and conditions (the "Agreement") apply to the purchase of goods (collectively, the "Products") identified in the purchase order issued by buyer (herein referenced as "Buyer") to seller (herein referenced as "Seller") which (directly or indirectly) references this Agreement.
- 1.2 Parties. Buyer and Seller are identified on the face of the Purchase Order (as defined below).

2 The Terms of the Purchase Order.

- 2.1 Terms of the Purchase Order. The purchase order issued by Buyer to Seller (the "Purchase Order") consists of the following (i) the Purchase Order; (ii) this Agreement; (iii) all other documents incorporated into or otherwise made a part of the Purchase Order by Buyer.
- 2.2 Seller's Terms Rejected. The Purchase Order does not constitute an acceptance of any offer or proposal made by Seller, and Seller acknowledges that any additional or different terms proposed by Seller in Seller's quotation, acknowledgement, confirmation, invoice or in any other document transmitted by Seller to Buyer in connection with the Purchase Order (whether before or after the issuance of Buyer's Purchase Order), are expressly rejected by Buyer, and are not part of the Purchase Order.
- 2.3 Entire Agreement. The Purchase Order is the entire agreement between the parties and when accepted, supersedes any prior agreements, negotiations or understandings of the parties, whether written or oral. No modification of the Purchase Order shall be effective unless in writing and signed by Buyer's authorized representative.
- 2.4 Inconsistencies. Seller shall review in depth, this Agreement, the Purchase Order and any and all other documents incorporated thereto to ensure there are not any inconsistencies contained therein. Seller shall immediately notify Buyer of any inconsistencies found with for direction to remedy.

3 Quantity.

- 3.1 Quantity. Seller shall deliver Products in strict conformance with the Purchase Order. Times and quantities are of the essence under the Purchase Order and Seller agrees to 100% on-time delivery of the quantities and at the times specified by the Purchase Order.

4 Shipping and Delivery.

- 4.1 Buyer Requirements. Seller will properly pack, preserve, mark, and ship the Products (and provide all related documentation) according to the requirements of Buyer, the involved carriers and the country of destination and will safeguard the Products against any loss or damages. No charges will be allowed for boxing, wrapping, cartage or storage unless so specified in the Purchase Order. Seller will promptly provide Buyer with, in the form requested by Buyer, the identity and amount of all ingredients and components (and any changes in the ingredients or components) of the Products.
- 4.2 Hazardous Materials. Before and at the time Products are shipped, Seller will give Buyer sufficient warning in writing (including, without limitation, appropriate labels on all Products, containers, and packing, disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is an ingredient or part of the Products, together with any special handling instructions that are needed to advise carriers or Buyer, or their employees, how to take appropriate measures while handling, transporting, processing, using or disposing of the Products, containers, or packaging. Seller agrees to comply with all Laws (as defined below) relating to such materials.
- 4.3 Country of Origin. Seller agrees to fulfill any customs or NAFTA related obligations, origin markings or labeling requirements, and local content origin requirements. Export licenses or authorizations necessary for the export of Products are Seller's responsibility unless otherwise stated in the Purchase Order, in which case Seller will provide the information necessary to enable Buyer to obtain the licenses or authorizations. Seller will promptly

notify Buyer in writing of any material or components used by Seller in filling the Purchase Order that Seller purchases in a country other than the country in which the Products are delivered. Seller will furnish any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller will promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Products' purchase price. If Products are manufactured in a country other than the country in which Products are delivered, Seller will mark Products "Made in [country of origin]." Seller will provide to Buyer and the appropriate governmental agencies the documentation necessary to determine the admissibility, and the effect, of entry of Products into the country in which Products are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of Products is true and that all sales covered by the Purchase Order will be made at not less than fair value under the anti-dumping Laws of the countries to which the Products are exported.

- 4.4 Title and Risk of Loss. Title to and risk of loss of all Products is subject to care, custody or control ("CCC") per the Incoterms as set forth in the Purchase Order shall remain with Seller until delivery and acceptance of the Products at Buyer's plant at the address set forth in the Purchase Order.
- 4.5 Delivery. Seller shall immediately notify Buyer if Seller's timely performance under the Purchase Order is delayed or is likely to be delayed. If Seller, for any reason, does not comply with the Purchase Order's delivery schedule, Buyer may (a) approve a revised delivery schedule; (b) require shipment of any of the Products by a more expeditious method of transportation; and/or (c) cover, and adjust any quantity requirement under the Purchase Order accordingly. Buyer reserves the right to reject and return all Products received in advance of any scheduled delivery date (if retained, time for payment shall be based upon the scheduled delivery date). Buyer's rights under this section are at Seller's sole expense, at Buyer's sole discretion and in addition to and without prejudice to any other rights or remedies available to Buyer.

5 Price, Payment and Taxes.

- 5.1 Price. The purchase price of the Products is set forth on the face of the Purchase Order. Unless otherwise stated in the Purchase Order, the purchase price is a firm fixed price for the duration of the Purchase Order and not subject to increase for any reason, including increased raw material costs, increased labor or other manufacturing costs, increased development costs, or changes in volumes from the volumes estimated or expected.
- 5.2 Invoices. Unless otherwise stated in the Purchase Order, invoices shall be issued on or after delivery of the Products to Buyer. All payments shall be made in U.S. dollars. Seller shall, at its expense, comply with all instructions and policies of Buyer with respect to the form and content for submission of invoices. Non-conforming invoices will be returned with stated reasons to Seller in order to correct and submit revised invoice. Payment terms will begin upon receipt of corrected invoice. Seller shall submit invoices electronically to the accounts payable email address as set forth in the Purchase Order.
- 5.3 Payment Terms. Buyer shall pay undisputed invoices for Products which conform with the Purchase Order within forty-five (45) days of Buyer's receipt of Seller's invoice. Seller's invoices will include at a minimum, Buyer's issued Purchase Order number and any other reference numbers, including line item detail as noted in the applicable Purchase Order relating to authorized charges. Buyer retains the right to withhold final payment until the product and all deliverables, including but not limited to; documentation, manuals, specifications, etc., as described in the Purchase Order are delivered to the Buyer which shall constitute final completion of the Purchase Order. Payment for Products shall not constitute acceptance of non-conforming Products, nor will it limit or affect any rights or remedies of Buyer.
- 5.4 Set Off. Buyer's payment of invoices or portions thereof or any other payments to Seller shall not constitute approval or acceptance of the Products nor be considered a waiver by Buyer of any of its rights, including those arising under this Agreement. All invoices, claims, and demands of Seller for monies due or to become due from Buyer shall be subject to deduction by Buyer for any set off or withholding right arising under this Agreement and for any amounts awarded to Buyer in a court order, judgment, or other final ruling, whether such set off, withholding, order, judgment, or ruling arose before or after any assignment of such monies by Seller.
- 5.5 Credits. Credits or benefits resulting from the Purchase Order, including trade credits, export credits or the refund of duties, taxes, or fees, belong to Buyer. Seller will provide all information and certificates (including

NAFTA Certificates of Origin) necessary to permit Buyer (or Buyer's customers) to receive these benefits or credits.

- 5.6 Taxes. Seller shall be solely responsible for all income, withholding and similar taxes levied upon the remunerations earned by Seller hereunder. Without limiting the generality of the foregoing, Seller accepts any and all withholdings that Buyer may be obligated to make, pursuant to applicable law, from compensation payments to Seller under this Purchase Order. If Seller is exempt from any such withholding taxes, it shall make available to Buyer such documentation and other information as may be required by the applicable taxing authority in order to establish Seller's exemption. Any use, sales, or similar taxes imposed by any governmental authority on or measured by any transaction between Seller and Buyer pursuant to this Purchase order shall be paid by Buyer in addition to the prices and fees (unless the prices or fees specifically include such taxes, as set forth on the applicable Purchase Order). Seller shall cooperate with Buyer in opposing the imposition of such taxes on any goods or services, the legality of which is reasonably contested by Buyer, and in securing any abatement or refund thereof sought by Buyer. Seller shall pay all other taxes imposed on any goods or services before transfer of title or performance thereof to or for Buyer.

6 Non-Conforming Products.

- 6.1 Rejection. Buyer shall be entitled to reject any Products which, in the sole discretion of Buyer, are not in conformity with Buyer's requirements or specifications set forth in the Purchase Order, or are unmerchantable or unfit for Buyer's intended use, or are otherwise defective (the "Defective Products"). At Buyer's option, Buyer may (i) return (at Seller's sole expense) the Defective Products for a refund or credit at the full invoice price (thereby reducing the quantity of Products under the Purchase Order); (ii) require Seller to replace the Defective Products with conforming non-defective Products; or (iii) require Seller to repair the Defective Products so that they meet the requirements or specifications of Buyer.
- 6.2 Corrective Action. Promptly upon learning of any Defective Products, Seller will develop, document and implement corrective actions in accordance with all applicable quality control policies and standards of Buyer.

7 Changes.

- 7.1 Buyer Changes. Buyer may, at any time, make changes to the Products under the Purchase Order, including, but not limited to, changes regarding the quantity, design, specifications, engineering level, materials, packaging, shipping date, or time or place of delivery. Seller will promptly implement any such change.
- 7.2 Seller Changes. Seller will not make any changes to the Products except at Buyer's written instruction or with Buyer's prior written approval. If Seller learns of a possible change to the Products that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Seller shall inform Buyer in writing of the possible change.
- 7.3 Impact on Cost Seller will promptly notify Buyer in writing if a change directed or approved by Buyer will affect cost or timing and provide substantiation of its claim. If Buyer determines that an adjustment is appropriate, Buyer and Seller will negotiate in good faith an equitable price adjustment (up or down), a change in shipping or delivery terms, or other appropriate adjustment. If Buyer determines that no adjustment is appropriate, it will so advise Seller in writing.

8 Warranties.

- 8.1 In addition to any other express and implied warranties provided by law or otherwise, Seller warrants for the benefit of Buyer and its customers, dealers and users of the Products, and all of their successors and assigns, that each Product shall (i) be new and conform to the Purchase Order in all respects (ii) strictly conform to all specifications, drawings, samples and other descriptions furnished by Buyer or otherwise part of the Purchase Order (iii) be in strict conformance with standards which are customary in the industry for similar goods (iv) be free from all defects in design (to the extent designed by Seller), workmanship, materials and fabrication, and be of the quality and workmanship (v) be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based upon Buyer's stated use and be fit and sufficient for the purposes intended by Buyer (vi) be in compliance with all applicable laws, regulations, decrees, codes, ordinances, resolutions, or other acts of any applicable governmental authority, whether federal, regional, state, county, local, or other

governmental agency (collectively, "Laws"); in each country where the Products (or goods into which the Products are incorporated) are to be sold or used.

- 8.2 Seller also warrants that the Products shall be delivered to Buyer free and clear of any security interest or other lien or encumbrance of any person and that Buyer shall have good and marketable title thereto.
- 8.3 All warranties of Seller extend to future performance of the Products and are not modified, waived or discharged by, and shall survive, delivery, inspection, testing, acceptance of, and payment for, the Products, and Buyer's approval of any design, drawing, material, process or specifications will not relieve Seller of these warranties. Seller waives any right to notice of breach.
- 8.4 The warranty period shall be the time period as specified in the applicable Purchase Order (the "Warranty Period"). If no Warranty Period is specified in the Purchase Order, the Warranty Period shall be either (i) the warranty period provided by applicable law or (ii) the warranty period offered by Seller, whichever is longer.
- 8.5 Seller will immediately notify Buyer in writing when it becomes aware of any ingredient, component, design or defect in the Products that is or may become harmful to persons or property.
- 8.6 Promptly after receipt of notice from Buyer, Seller shall correct, repair, or replace, any deviations from the Purchase Order or any defective product, materials, or workmanship furnished, including, without limitation, engineering and procurement, as necessary. Such correction, repair or replacement work shall be performed at Seller's sole expense. Work of removal and reinstallation of the Products shall be included in Seller's obligations. As an alternative, Buyer may, at its option, make the corrections, repairs, or replacements. If Buyer so elects, it shall notify Seller, and Seller shall promptly refund to Buyer an amount reasonably equal to those costs that would have otherwise been incurred by Seller had Seller itself effected such corrections, repairs, or replacements. If Buyer so elects, Seller shall assume no responsibility or liability whatsoever for the remedial work performed. Notwithstanding the foregoing, any such remedial work performed by Buyer will not affect or void the warranty of the Products.

9 Indemnification.

- 9.1 General Indemnity. Supplier shall indemnify, defend, and hold harmless Buyer against and from any and all claims, losses, liens, demands, causes of action, suits, judgments, other proceeding brought against Buyer, costs and expenses, including (i) injury, bodily or otherwise, to or death of persons, (ii) damage to or destruction of property belonging to Seller, Buyer, or others, (iii) violation of any Laws, and (iv) environmental liabilities (collectively "Claims"), to the extent such Claims arise out of or are caused by Seller's breach of this Agreement or any Seller Party's or Seller's Party's invitee's acts, omissions, or performance in connection with this Agreement; provided, however, that the foregoing indemnification shall not apply to the extent such Claim arises out of or is caused by Buyer's gross negligence or willful misconduct.
- 9.2 Intellectual Property Indemnity. Seller warrants, represents, and covenants to Buyer that all Products, the sale thereof by Seller to Buyer, the use thereof by Buyer, do not and will not infringe, directly or indirectly, on any patents or violate any copyrights, trademarks, trade secrets, or any other intellectual property rights ("Third Party Rights"), or cause Buyer to be liable for any fees or royalties arising under any Third Party Rights. Seller shall, at its sole cost and expense, indemnify, defend, and hold harmless Buyer from and against any and all claims of infringement or violation of any Third Party Rights and all losses related thereto arising with respect to any Products, the sale to or use thereof by Buyer. In the event the Products or any part thereof are alleged to infringe or violate any Third Party Rights, at Buyer's request, Seller shall (i) obtain, at its sole cost and expense, an irrevocable, royalty-free license for Buyer to legally use such Products on the same terms and conditions under this Agreement and each applicable Purchase Order, (ii) modify such goods to be non-infringing but with equivalent functionality and performance or (iii) replace such goods with other non-infringing goods with equivalent functionality and performance; provided, however, that such license, modification, or replacement shall in no way amend or relieve Seller of its warranties and obligations as set forth in this Agreement and Purchase Order.
- 9.3 If Seller is obligated to indemnify under this Article, then Buyer may at its sole option participate in the defense of any third party claim with its own counsel, at Seller's expense.

10 Inspection and Audit.

- 10.1 Seller's Quality System. Seller shall maintain a periodically reviewed and checked effective written quality control system that is acceptable to Buyer in its sole discretion, which ensures compliance with the Purchase Order requirements
- 10.2 Inspection. Buyer may enter Seller's facility at any time to inspect, including but not limited to; the facility, Products, materials, and any of Buyer's Property (as defined below) related to the Purchase Order. Buyer's inspection does not constitute acceptance of the Products or any work-in-process and does not relieve Seller of any of its warranties or responsibilities under the Purchase Order. Notwithstanding the foregoing, Buyer shall have no obligation to inspect or test the Products whether prior to or after delivery of the Products to Buyer.
- 10.3 Incoming Inspection. Products supplied to Buyer shall be subject to inspection using Buyer's incoming inspection procedures. Buyer may utilize test reports, outside laboratory testing, specifications, and dimensional verification as appropriate. All appropriate paperwork, i.e., test reports, packing lists and statistical data as required, must accompany each shipment and must be present at delivery. Product found to be non-conforming may be returned to Seller. Buyer shall not be required to submit suspect material to 100% inspection.
- 10.4 Control of Inspection Measuring and Test Equipment. Seller shall provide personnel, suitable tools, gauges and test equipment for the purpose of evaluating product conformance to specified requirements.
- 10.5 Audit. Upon reasonable notice to Seller, either Buyer or its direct or indirect customers (or a third party designee) may audit Seller's production facility, Products and any of Buyer's Property (including all pertinent documents, data and other information) related to the Purchase Order for the purpose of verifying Seller's costs and its compliance with its obligations under the Purchase Order.
- 10.6 Subcontractors. Seller hereby certifies and guarantees that Buyer may, at Buyer's sole option and discretion, perform quality audits at subcontractors facility. Seller will ensure that the terms of its contracts with its subcontractors provide Buyer and its customers with all of the rights specified in this Section.

11 Subcontractors.

If Seller intends to subcontract all or part of the manufacture of the Products to a third-party subcontractor and locate tooling on the subcontractor's premises, Seller will: (a) inform Buyer in advance in writing of the identity of the subcontractor and the location of the tooling; and (b) be solely responsible for payments to the subcontractor.

12 Term, Termination and Suspension.

- 12.1 Duration. The Purchase Order shall become effective on the date specified in the Purchase Order (the "Effective Date"). Unless terminated earlier in accordance with the Terms of the Purchase Order, the Purchase Order shall terminate on the date specified in the Purchase Order or, if no date is specified, one year from the Effective Date (the "Initial Term").
- 12.2 Termination by Buyer. In addition to any other rights of Buyer to cancel or terminate the Purchase Order, Buyer may terminate the Purchase Order in whole or in part by written notice (each, a "Termination Notice") (i) for convenience at any time but not less than three (3) days advance Termination Notice to Seller (ii) for default, effective upon delivery of a Termination Notice or upon such other date specified in said Termination Notice. Seller shall be in default if (a) Seller breaches any warranty; (b) Seller repudiates, breaches or threatens to breach any of the Terms of the Purchase Order; (c) Seller fails to deliver, or threatens not to deliver, Products in connection with the Purchase Order; (d) Seller fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper performance of the Purchase Order; (e) Seller becomes insolvent or makes an assignment for the benefit of creditors, or proceedings in bankruptcy or insolvency are instituted by or against Seller; (f) Seller sells all or substantially all of its assets to a third party; or merges or consolidates with, or sells all of its stock or membership interests to, another party, or undergoes some other form of reorganization; (g) Seller undergoes a change of control which, in Buyer's sole discretion, is detrimental to the interests of Buyer, (h) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Purchase Order; (i) at any time, in Buyer's sole judgment, Seller's financial or other

condition or progress on the Purchase Order shall be such as to endanger timely performance; or (j) Seller fails to perform or observe or perform its obligations under any other order or agreement with Buyer or any of Buyer's affiliates. Termination by Buyer shall not relieve Seller of any liability under the Purchase Order.

12.3 Buyer's Obligations Following Termination.

Buyer shall pay to Seller in connection with a termination the purchase price for all conforming Products received by Buyer prior to the Termination Notice, without duplication, in complete and final satisfaction of any liabilities relating to the Purchase Order.

12.4 Buyer may suspend performance of all or any portion of the Purchase Order at any time by providing notice of such suspension to Seller. Upon receipt of such notice, Seller shall (a) cease performance of the Products to the extent specified in the notice and on the date and time specified, and (b) take such other action as is specified in the notice or as may be necessary to minimize costs associated with the suspension. Upon receipt of a notice from Buyer to resume performance of the Products, Seller shall resume as specified in such notice and subject to the terms of the Purchase Order. Provided Seller has complied with the foregoing requirements, Seller will, as full compensation for the suspension, be paid (i) a standby charge, in such amount as may be mutually agreed to by the parties, for Seller to keep its organization, personnel, and equipment committed to the Products on a standby basis.

13 Infringement; Use of Products.

13.1 "Intellectual Property Right(s)" means any and all copyrights, trademarks and trade names, trade secrets, patents, designs and other industrial property rights, and all other intellectual and industrial property rights, whether arising by operation of law, contract, license or otherwise, under U.S. or any foreign law.

13.2 Seller warrants that the Products and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any Intellectual Property Rights.

13.3 Seller warrants that all Products or other deliverables provided under the Purchase Order will be original to Seller and will not incorporate any Intellectual Property Rights of any third party.

13.4 In addition to its indemnification obligations under Section 9 hereof, Seller waives any claim against Buyer arising out of or related to a third party claim asserted against Seller or Buyer for infringement of any Intellectual Property Rights.

13.5 Seller warrants that it is aware of the uses to which the Products are to be put, and grants to Buyer and each party or entity to which the Products are provided, a royalty-free, unrestricted, irrevocable and perpetual license (with a right to sublicense to others) to (i) use, repair and reconstruct the Products in any manner, and (ii) to use any additional or background intellectual property owned or acquired by Seller that is necessary or incident to the reasonably intended use or application of the Products. Seller further warrants that it has full right to grant said license.

13.6 Seller will ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this Section 13.

14 Confidential and Proprietary Information.

14.1 Seller agrees to treat as confidential all information, data and materials received in connection with the Purchase Order and the performance of its obligations thereunder, including, without limitation, Buyer's business, processes, apparatus, products or services, research, research programs, customers, customer lists, supplier and vendor identities, customer requirements, know-how or Intellectual Property Rights, marketing, pricing, financial data, forecasts, business plans, strategies or other confidential or proprietary information, including the financial terms and all other Terms of the Purchase Order (collectively, the "Confidential Information"). Seller shall exercise the same degree of care with regard to the protection of such Confidential Information as it uses in protecting and preserving its own confidential and proprietary information. Seller shall use Confidential Information strictly for the benefit of Buyer for purposes of implementing the Purchase Order and agrees that it will not use such information for any

other purpose and it will not directly or indirectly disclose such Confidential Information to any third party without receiving Buyer's prior written consent.

- 14.2 Notwithstanding the foregoing, Seller may disclose such Confidential Information to any of its officers, directors, employees, affiliates, agents, advisors or subcontractors who (i) has a need to know the same, and (ii) has been advised of, and has agreed in writing to comply with, the restrictions upon such Confidential Information set forth in the Purchase Order.
- 14.3 Seller further agrees not to assert any claims with respect to any of Seller's proprietary, technical or confidential information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Products.
- 14.4 Confidential Information shall not include information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of Seller; or (c) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer.
- 14.5 Notwithstanding anything to the contrary in these Purchase Order, any confidentiality or non-disclosure agreement between the parties that predates the Purchase Order will remain in effect except as expressly modified by the Purchase Order, and to the extent of a conflict between the express terms of such an agreement and this Section 14, the terms of that agreement will control.
- 14.6 All documents containing Confidential Information produced or acquired by Seller under the Purchase Order will belong to Buyer. Seller shall, within five (5) business days of Buyer's request or the expiration or termination of the Purchase Order, return all Confidential Information (including all copies, notes and/or extracts thereof) to Buyer at Seller's expense.

15 Insurance; Waiver of Liens.

- 15.1 Without limiting any of the other obligations or liabilities of the Seller under the Purchase Order, Seller will at all times specified below carry and continuously maintain at its own expense, or cause to be carried and continuously maintained, at least the minimum insurance coverage set forth below, in each case with insurance companies of recognized responsibility and with terms and conditions acceptable to Buyer. By way of description, such insurance shall include at the least the following coverage at all times during the duration of the Purchase Order, occurrence-based comprehensive general liability, automobile liability and statutory worker's compensation and employer's liability:
 - 15.1.1 Workers' compensation insurance with statutory limits in compliance with the law or laws of the state or states in which employees are hired or will work, and employers' liability insurance with limits of \$1,000,000;
 - 15.1.2 Commercial general liability insurance and excess (if necessary) with limits of not less than \$3,000,000 general aggregate and \$5,000,000 per occurrence, and including but not limited to the following coverages: blanket contractual, products, operations, completed operations, independent contractors;
 - 15.1.3 Automobile liability insurance covering any auto, with limits of not less than \$1,000,000 combined single limit;
 - 15.1.4 Umbrella excess liability coverage of not less than \$2,000,000 beyond each primary policy; and
 - 15.1.5 Professional Liability insurance, of not less than \$1,000,000 per occurrence and in the annual aggregate.
- 15.2 Seller shall furnish Buyer, on Buyer's request and on any coverage renewal date, approved certificates of all insurance required hereby executed by each insurer or by an authorized representative of each insurer where it is not practical for such insurer to execute the certificate itself. Such certification shall evidence that the insurance required is in effect, identify the underwriters, the type of insurance, the insurance limits (including applicable deductibles) and the policy term, and shall specifically list the special provisions enumerated for such insurance required by this Section. The insurance certificates shall provide that not less than 30 days advance written notice will be given to Buyer prior to any cancellation, reduction or restrictive modification of the coverage. Upon request, Seller shall furnish Buyer with copies of all insurance policies, binders, endorsements, cover notes and other evidence of such insurance obtained by Seller.

- 15.3 Insurance carried in accordance with this Section 15, with the exception of worker's compensation and employers liability insurance, shall be endorsed to provide that Buyer shall be included as additional insured with the understanding in each case that any obligation imposed upon the insured (including the liability to pay premiums) shall be the sole obligation of Seller and not that of Buyer. Inasmuch as such insurance is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exceptions of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.
- 15.4 With respect to all insurance maintained by Seller hereunder, (i) the interests of Buyer and Seller shall not be invalidated by any action or inaction of any other person, and Seller and Buyer shall be insured regardless of any breach or violation by the Seller or any other person of any warranties, declarations or conditions contained in such policies; (ii) all deductibles or self-insured retentions shall be in amounts acceptable to Buyer but shall be paid by Seller; (iii) with the sole exception of professional errors and omissions insurance, the insurers thereunder shall waive all rights of subrogation against Seller and Buyer, any right of set-off and counterclaim and any other right to deduction whether by attachment or otherwise; (iv) such insurance shall be primary without right of contribution of any other insurance or self-insurance carried by or on behalf of Buyer; and (v) if such insurance is cancelled by the insurer for any reason whatsoever (including nonpayment of premium) or any substantial change is made in the coverage that affects the interests of Seller and Buyer, such insurance shall nonetheless remain effective for thirty (30) days after receipt of written notice to Buyer sent by registered mail from such insurer of such cancellation or change
- 15.5 Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Products and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer.

16 Force Majeure.

No delay, failure or omission of either party to perform its obligations under the Purchase Order shall be deemed a breach of the Purchase Order or create any liability if such failure is due to an event or occurrence beyond the party's reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority, embargoes, fires, explosions, natural disasters, riots, wars, terrorist acts, sabotage, inability to obtain power, or court injunction or order. The change in cost or availability of materials and components based on market conditions, supplier actions, labor disruptions or contract disputes will not excuse Seller's performance, obligations or otherwise and Seller assumes these risks and associated costs. As soon as possible (but no more than one full business day) after the occurrence, the party giving notice will provide written notice describing such delay and assuring the party receiving the notice of the anticipated duration of the delay and the time that the delay will be cured.

17 Buyer's Liability.

Buyer's sole liability under the Purchase Order (including its termination, expiration or cancellation) is to pay the purchase price for the Products in accordance with Section 5 and to pay the specific and applicable termination related amounts described in Sections 12.4.

18 Limitation on Assignment.

The Purchase Order shall be binding upon Seller and Buyer and their respective successors and assigns. Seller may not assign or subcontract this Agreement to any third party without the prior written consent of Buyer.

19 Remedies.

The rights and remedies reserved to Buyer in the Purchase Order will be cumulative with and in addition to all other legal or equitable remedies. In any action brought by Buyer to enforce Seller's obligations in connection with the production or delivery of Products or for possession of property, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to an immediate order for specific performance of Seller's obligations. Buyer shall recover actual and reasonable attorney's fees (including the cost of in-house counsel) in any action arising out of the Purchase Order, unless Seller is the prevailing party.

20 Miscellaneous.

- 20.1 **Jurisdiction and Applicable Law.** The laws of the State of Colorado, excluding its conflict of laws principles, shall govern the interpretation and construction of the Purchase Order and the rights and obligations of the parties hereunder. The United Nations Convention on Contracts for the International Sale of Products shall not apply to the Purchase Order.
- 20.2 **Waiver.** Either party's failure to insist on the performance by the other party of any term or failure to exercise any right or remedy reserved in the Purchase Order, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.
- 20.3 **Severability.** If any provision of the Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
- 20.4 **Survival.** The obligations of Seller to Buyer survive termination of the Purchase Order, except as otherwise provided in the Purchase Order.
- 20.5 **Interpretation.** No provision may be construed against Buyer as the drafting party. Section headings are for convenience or reference only, and do not affect the meaning of the Purchase Order.
- 20.6 **Notices.** To the extent not otherwise provided in the Purchase Order, notices under the Purchase Order shall be given in writing only, delivered by registered or certified mail, return receipt requested, or by commercial courier, and shall be deemed given, if mailed, five (5) days after notice was deposited in the United States mail, postage pre-paid, and addressed to the party for whom intended at such party's address, or if sent by commercial courier, upon confirmed delivery.
- 20.7 **No Publicity.** Seller will not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Products covered by the Purchase Order or any terms of the Purchase Order (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.
- 20.8 **Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in the Purchase Order will make either party the employee, agent or legal representative of the other for any purpose. The Purchase Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Purchase Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.