

## TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE – AGREEMENT:** Seller's commencement of work on the goods and/or services subject to this purchase order (the "Goods") or shipment of the Goods, whichever occurs first, shall be deemed an effective mode of acceptance of all terms and conditions however described in this purchase order (the "Order"). **ANY ACCEPTANCE OF THIS ORDER IS LIMITED TO ACCEPTANCE OF THE EXPRESS TERMS CONTAINED ON THE FACE AND BACK HEREOF.** Subject to this paragraph any proposal for additional or different terms or any attempt by Seller to vary any of the terms of this Order is objected to and rejected. This is the entire contract and no changes of any kind whatsoever are binding on Buyer unless they are in writing and signed by an authorized representative of Buyer's Sourcing department.
2. **DELIVERY.** Unless otherwise provided, this is a destination contract, F.O.B. (D.D.P for shipments outside the United States) at Buyer's designated ship-to location. Seller shall make all arrangements and bear all costs for the transportation and insurance of the Goods. Time is of the essence of this Order, and if delivery of Goods is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this Order as to Goods not yet received by notice effective when received by Seller and to purchase substitute Goods and charge Seller with any loss incurred. Delivery of Goods by the Seller more than three (3) business days early shall not be made under the Order without Buyer's prior written authorization. Unless otherwise agreed in writing by an authorized Buyer representative, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time reasonably required to meet Buyer's delivery schedule. Buyer may retain goods furnished in excess of the quantity specified or in excess of any allowable overage for no additional cost; unless Seller notifies Buyer within 15 days after shipment that it desires the return thereof. Seller will reimburse Buyer for the full cost of returning such overshipment.
3. **PACKAGING AND SHIPMENT.** No charges will be allowed for transportation, packaging, packing or returnable containers unless stated in this Order. Seller shall prepare and pack the Goods to prevent damage and deterioration and to comply with carrier tariffs and Buyer's specifications, if any. Damage to any Goods resulting from improper packaging will be charged to Seller. If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this Order, any increased transportation costs resulting therefrom shall be paid for by Seller unless both parties mutually agree in writing the necessity for such rerouting or expedited handling has been solely caused by Buyer.
4. **SPECIFICATIONS.** All Goods ordered with reference to Buyer's specifications shall comply with such specifications, current as of the date of this Order, unless otherwise specified in writing by Buyer.
5. **TERMINATION WITHOUT CAUSE.** Buyer reserves the right to terminate this Order or any part hereof without cause. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause its suppliers and subcontractors to also cease such work. In order to reduce such costs of termination to Buyer, the Seller will divert parts or work-in-process from canceled Orders to fill other orders, wherever possible. Subject to the notice requirement, Seller shall be paid a termination charge consisting of a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination; however, in no event shall the termination payment exceed the price of the terminated Goods. Any claim for adjustment under this paragraph shall be deemed waived unless asserted in writing by the Seller (stating the amount of the claim) within thirty (30) days from the date of receipt by Seller of such notice of termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors that Seller could reasonably have avoided.
6. **TERMINATION FOR CAUSE.** If Seller fails to cure any failure to perform, discharge or fulfill its obligations under this Order including but not limited to failure to make any delivery in accordance with the agreed delivery date or schedule, or otherwise fails to observe or comply with any of the other instructions, terms, specifications, conditions or warranties applicable to this Order within ten days after receipt of a written notice from Buyer that Buyer considers Seller to be in default under this Order, or fails to make progress so as to endanger performance of this Order, or in the event of any proceedings by or against Seller in bankruptcy or insolvency or appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided by this Order or by law, cancel all or any part of this Order by written notice to Seller without any liability by Buyer to Seller.
7. **BUYER APPROVALS AND REVIEWS.** The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of any of its obligations under this Order, nor excuse or constitute a waiver of any defects or nonconformities in any Goods furnished under this Order, nor

change, modify or otherwise affect any of the provisions of this Order, including but not limited to the prices and delivery schedules contained herein.

8. **PROPRIETARY INFORMATION – CONFIDENTIALITY.** Seller shall consider all information furnished by Buyer to be confidential (“Information”) and shall not disclose any such Information to any other person, or use such Information itself for any purpose other than providing Goods solely to Buyer, unless (i) Seller obtains written permission from Buyer to do so or (ii) otherwise provided in the Order. Upon Buyer’s request, and in any event upon the completion, or cancellation of this Order, Seller shall return all such Information to Buyer or make such other disposition thereof as directed by Buyer. Seller shall be liable for all damages to Buyer for any loss, disclosure, misuse and/or misappropriation of the Information. Any Information that Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the Goods covered by this Order shall be deemed to have been disclosed as part of the consideration for this Order, and Seller shall not assert any claim against Buyer by reason of Buyer’s use thereof in connection with the use or sale of Goods. The ownership of any Information disclosed by Buyer shall remain with Buyer.
9. **RELEASE OF NEWS INFORMATION AND ADVERTISING.** Seller shall not, without the prior written consent of Buyer: make any news release, advertisement, announcement, denial or confirmation of all or any part of the subject matter of this Order, or buyer’s purchases hereunder.
10. **WARRANTY.** Seller expressly warrants that all Goods furnished under this Order shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such Goods will conform to any samples and to any statements made on the containers or labels or advertisements for such Goods, and that any Goods will be adequately contained, packaged, marked, and labeled. Seller warrants that all Goods furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which Goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the Goods, Seller warrants that such Goods will be fit for such particular purpose. These warranties shall survive inspection, test, acceptance and use. Seller’s warranty shall run to Buyer, its successors, assigns and direct and indirect customers, and to users of products sold by Buyer. At Buyer’s discretion, Seller agrees promptly to replace the Goods or correct defects of any Goods not conforming to the foregoing warranty, without expense to Buyer, when notified of such nonconformity by Buyer. In the event of failure of Seller promptly to correct defects in or replace nonconforming Goods, Buyer, after ten (10) calendar days prior notice to Seller, may make such corrections or replace such Goods and charge Seller for the cost incurred by Buyer in doing so. Each of the rights and remedies reserved to Buyer under the terms of this Order shall be cumulative and additional to any other or further remedies provided in law or in equity or in this Order.
11. **PRICE WARRANTY.** Seller warrants that the prices for the Goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. In the event Seller reduces its price for such article during the term of this Order, Seller agrees to reduce the prices for the Goods correspondingly. Seller warrants that prices shown on this Order shall be complete, and no additional charges of any type shall be added without Buyer’s express written consent. Such additional charges include but are not limited to shipping, packaging, labeling, duties, taxes, storage, insurance, boxing and crating.
12. **FORCE MAJEURE.** Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such Goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller’s direct additional costs in holding the Goods or delaying performance of this Order at Buyer’s request. In addition, neither party shall be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of any Government authority, fires, floods, earthquakes, epidemics, strikes, embargoes, or unusually severe weather. If the delay is caused by the delay of a subcontractor of Seller and if such delay arises out of causes beyond the reasonable control of both Seller and the subcontractor, and without fault or negligence of either of them, Seller shall not be liable to Buyer unless the goods to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule. Seller will notify Buyer in writing within ten (10) days after becoming aware of any cause for delayed delivery.
13. **PATENTS.** Seller agrees to indemnify, defend and hold harmless Buyer, its successors, assigns, agents, and direct and indirect customers and users of Goods sold by Buyer customers, against any and all losses, claims, damages, liabilities, settlements, costs and expenses (including court costs and attorneys fees) arising out of any claims, demands, suits, or proceedings for infringement or alleged infringement of patent, maskwork or copyright or other intellectual property right by the Goods furnished hereunder, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of Goods furnished hereunder, provided that Seller is notified of such claims suits or proceedings in writing. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires,

and the costs of such representation shall be paid by Seller. Buyer does not grant indemnity to Seller for infringement of any patent, trademark, maskwork, copyright, or other intellectual property rights.

14. **INSURANCE.** Seller agrees that all work and performance of obligations hereunder shall be done as an independent contractor and that the persons doing such work shall not be considered employees or agents of Buyer. Seller shall maintain all necessary insurance coverages, including public liability and workers' compensation insurance. Seller shall defend, indemnify and hold harmless Buyer from any and all claims, suits, liabilities, settlements, costs and expenses (including court costs and attorneys fees) arising out of its performance of the work covered by this Order and, upon Buyer's request, shall name Buyer as an additional insured under any such insurance agreement and shall, within thirty (30) days of Order acceptance, provide Buyer a copy of such insurance certificate.
15. **INDEMNIFICATION.** Seller shall defend, indemnify and hold harmless Buyer and all its successors, assigns, agents, and customers, against any and all losses, claims, damages, liabilities, settlements, costs and expenses (including court costs and attorneys fees) arising out of any claims, demands, suits, or proceedings relating to any defect or claimed defect in the Goods purchased hereunder, or from any act or omission of Seller, its agents, employees (temporary or otherwise), or subcontractors. This indemnification shall be in addition to the warranty and insurance obligations of Seller.
16. **BUYER'S PROPERTY.** (a) All property held or used by Seller in connection with this Order that is owned, furnished, charged to or paid for by Buyer including, but not limited to, materials, tools, dies, jigs, molds, test hardware, patterns, fixtures, equipment, drawings and other technical information, specifications, and any replacement thereof, shall be and remain the property of Buyer and be subject to removal and inspection by Buyer at any time without cost or expense to Buyer. Buyer shall have access to Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Buyer's property, used only for this Order and insured at replacement cost by Seller at Seller's expense for Buyer's protection. Seller shall assume all liability for and maintain such property and return the same to Buyer in its original condition, reasonable wear and tear excepted, and when such property is no longer required hereunder, Seller shall furnish Buyer with a list thereof and shall comply with any Buyer disposition instructions applicable thereto. Buyer shall not be obligated to pay any invoices for tooling except as specifically agreed and until the first Good produced therefrom shall have been received and accepted. (b) Materials furnished by Buyer on other than a charge basis in connection with this Order shall be deemed to be held by Seller as bailee thereof. Seller agrees to pay Buyer's replacement cost for all such material lost, spoiled or otherwise not satisfactorily accounted for insofar exceeding an allowance of 2% for scrap.
17. **CHANGES.** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, quantities, time and place of delivery and method of transportation. If any such changes cause an actual increase or decrease in the cost or the time required for performance of this Order, Seller shall notify Buyer in writing (including the amount of the increase or decrease), within thirty (30) days after receipt of such Buyer's change notice. If such notice is timely given, an equitable adjustment in the cost or delivery date shall be made, and this Order shall be modified in writing accordingly. Seller agrees to accept any such changes and proceed with the performance of this Order, subject to this paragraph.
18. **INSPECTION/TESTING.** Payment for the Goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect Goods and to reject any Goods that are in Buyer's judgment defective or nonconforming. Goods rejected, Goods supplied in excess of quantities called for herein and Goods supplied either late or early may be returned to Seller at Seller's expense. In addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such Goods. In the event Buyer receives Goods whose defects or nonconformity is not apparent on examination, Buyer reserves the right to inspect such Goods within a reasonable time after discovery of such defect or nonconformity. Buyer reserves the right to inspect the Goods by lot. In the event of any defect or nonconformity, Buyer may return the Goods and reject or revoke delivery or exercise the other remedies stated in Section 10 (Warranty). Nothing contained in this Order shall relieve in any way the Seller from the obligation of testing, inspection and quality control. If any inspection or test is made on Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of inspectors of Buyer and Buyer's customers. Such inspections and tests shall be performed in such a manner as to not unduly delay the work. All Goods are also subject to final inspection and acceptance at Buyer's facility notwithstanding any payments or other prior inspections.
19. **ENTIRE AGREEMENT AND SEVERABILITY.** This Order, and any documents referred to herein, constitutes the entire agreement between the parties relative to these matters. Except as permitted herein, no amendment or modification of this Order shall be effective unless in writing and signed by an authorized representative of both parties. If any provision of this

Order is invalid or unenforceable, all other provisions of this Order shall remain in full force and effect. If any of the provisions of this Order shall be declared void by a court of final jurisdiction, such provisions shall be severed from the other provisions of this Order, and the validity of the other provisions and of the entire Order shall not be affected thereby.

20. **ASSIGNMENT.** This Order may not be voluntarily assigned in whole or in part or subcontracted in whole or substantially in whole by Seller without the prior written consent of Buyer, except upon the merger, consolidation, or other transfer of all or substantially all of the assets of Seller, and any such assignment shall be null and void. Seller may, however, assign this Order to its wholly or majority-owned subsidiaries without the prior written consent of Buyer, as long as the Seller remains liable and a written notification of the assignment is made to Buyer. The terms and conditions of this Order shall bind any permitted successors and assigns of either party.
21. **SET-OFF.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
22. **WAIVER.** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not waive any other terms, conditions, privileges, rights or remedies hereunder whether of the same or similar type.
23. **TITLE.** Except if title has passed to Buyer or Buyer's customers under other provisions of this Order, title to the Goods shall pass to Buyer upon delivery of the Goods to the F.O.B. point named herein.
24. **TAXES.** Seller is liable for and shall pay all taxes, impositions, charges and exactions imposed on or measured by this Order except those Buyer specifically agrees or is required by law to pay and that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges and exactions for which Buyer has furnished an exemption certificate.
25. **EQUAL OPPORTUNITY CLAUSE.** Insofar as applicable to the Seller, the Equal Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam era stated at 41 CFR 60-250.4, the affirmative action clause for disabled workers stated at 41 CFR 60-741.5(a) and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this Order. By accepting this Order, Seller certifies that it complies with these regulations, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8.
26. **NOTICE TO BUYER OF LABOR DISPUTES.** (a) Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller shall immediately give notice thereof, including all relevant information, with respect thereto, to Buyer. (b) Seller agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder to which a labor dispute may delay the timely performance of this Order.
27. **COMPLIANCE WITH LAWS.** In the performance of this Order, Seller shall comply with all applicable national, federal, state and local laws and regulations.
28. **HAZARDOUS MATERIALS.** Seller shall notify Buyer of every Good ordered hereunder that contains material hazardous or injurious to the health or physical safety of persons even though said hazard or injury may occur due to mishandling or misuse of the article. In addition, Seller shall identify the hazardous or injurious material and notify Buyer of the effects of such material on human beings and the physical manifestations that could result. For each article so identified, Seller shall supply Buyer warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard and its effects.
29. **GRATUITIES AND INDUCEMENTS.** Seller warrants that neither it nor any of its employees, agents or representatives has offered or given, or received, any gratuities, payment or other item of value with a view toward improperly securing this Order or securing or rewarding favorable treatment with respect thereto.
30. **TARGETED SUBCONTRACTING.** To support Buyer's and U.S. Government policy, Seller agrees insofar as consistent with the efficient performance of this Order, in its subcontracting to provide the maximum practicable opportunity to participate to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns (as defined in U.S. Federal Acquisition Regulation 52.219-8).

31. **DISPUTES.** In the event that any claim or controversy arising out of this Order cannot be settled by the parties themselves, the parties agree to attempt in good faith to resolve such claim or controversy by mediation, in accordance with the Judicial Arbitration and Mediation Services (JAMS) in Orange County, California, in the English language and with each party responsible for their respective costs associated thereto. Any dispute that is not settled by agreement of the parties or by such mediation may be settled by appropriate legal proceedings with venue of such proceedings at Buyer's address printed on the face of this Order. Pending any decision, appeal or judgment in such proceedings or other settlement of any dispute arising under this Order, Seller shall proceed diligently with the performance of this Order in accordance with the decision of Buyer.
32. **CHOICE OF LAW.** This Order shall be governed by and construed and enforced in accordance with the internal law of the state of California, United States of America, including its provisions of the Uniform Commercial Code, but specifically excluding its conflicts of laws provisions and the provisions of the U.N. Convention on Contracts for the International Sale of Goods.
33. **TECHNICAL ASSISTANCE.** Buyer's engineering and technical personnel may from time to time render assistance or give technical advice to, or affect an exchange of information with Seller's personnel in a liaison effort concerning the Goods to be furnished under this Order. However, such exchange of information or advice shall not authorize Seller to change the Goods to be furnished hereunder or the provisions of the Order. No change shall be made without the prior written consent of a duly authorized representative of Buyer's Sourcing department as described in Section 1.

SQ04-0019