

PURCHASE ORDER TERMS AND CONDITIONS

1. **Order Documentation and Parties.** These Purchase Order Terms and Conditions (these "Terms and Conditions") are intended to be referenced and incorporated in a Purchase Order between the parties named in the Purchase Order to together comprise the Order which is the agreement between the parties with respect to the purchase and sale of the goods and/or services referenced in these Terms and Conditions. Accordingly, as used in these Terms and Conditions the term "Order" means any Purchase Order which references these Terms and Conditions together with these Terms and Conditions. In the event of any conflict in the Order between the provisions of the Purchase Order and the provisions of these Terms and Conditions, the provisions of the Purchase Order will prevail and apply for the Order. The parties to the Order are the person who is identified in the Purchase Order as the person issuing the Purchase Order ("Buyer") and the other person who is identified in the Purchase Order as the person who is the seller or supplier ("Seller").
 2. **Submission and Acceptance of Order.** Once the Order has been submitted by Buyer, Seller shall be bound by the Order when it returns an acknowledgment or written confirmation of the Purchase Order to Buyer, when it presents Buyer with an invoice related to the Purchase Order or when it ships or delivers to Buyer any of the goods referenced in the Purchase Order ("Goods") and/or performs any of the services referenced in the Purchase Order ("Services"). No terms or conditions which add to, vary from or conflict with, or are otherwise additional to or different from, the terms and conditions of the Order that are proposed by Seller or included in any communication (whether in written, oral or electronic form) by Seller to Buyer in connection with the subject matter of the Order will be or become part of the Order, **and any and all such additional or different terms and conditions, whether or not they materially alter the Order, are hereby objected to and rejected by Buyer**, without any further notice of such objection and rejection. Any such proposed terms or conditions shall be void and the Order shall constitute the complete and exclusive statement of the entire agreement between Buyer and Seller and may be modified only by a written instrument executed by authorized representatives of both Buyer and Seller. If the Order has been issued by Buyer in response to an offer by Seller, and if any terms or conditions in the Order are additional to or different from any terms or conditions of such offer, then the issuance of the Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assent to such additional and different terms and conditions in the Order and acknowledge that the Order constitutes the complete and exclusive statement of the entire agreement between Buyer and Seller with respect to the subject matter of the Order and the subject matter of such offer together; and Seller shall be deemed to have so assented and so acknowledged unless Seller notifies Buyer to the contrary in writing within ten (10) days of receipt of the Order. Such notice requirement shall not be satisfied by Seller presenting Buyer with alternative pre-printed terms and conditions related to the subject matter of the Order, whether via a quotation, acknowledgment, confirmation, invoice or otherwise.
 3. **Performance Date.** Performance by delivery or otherwise of Goods and/or Services must be made on the delivery or other performance date specified in the Order (the "Performance Date") in accordance with the terms thereof specified in the Order. Time is of the essence with respect to performance under the Order. Shipments of Goods or provision of Services in greater or lesser quantity than ordered in the Order may be returned or refused at Seller's expense, unless advance written consent thereof is issued by Buyer. If Seller's performance with respect to Goods and/or Services fails to meet the Performance Date or any or all Goods and/or Services covered by the Order are not shipped or provided, being manufactured or generated at a rate, or commenced in time to meet, or can otherwise be reasonably expected to meet, the required Performance Date, Buyer, at its option, without limiting its other rights or remedies under the Order or at law or equity, may either (a) direct expedited routing/delivery and/or overtime work necessary to meet the Performance Date and charge costs incurred thereby to Seller or (b) cancel or postpone delivery or provision of all or part of the Order without charge and/or, at Buyer's option, obtain alternative goods or services from another supplier and cancel the Order to the extent such alternative goods or services are obtained, in each such case without liability under the Order. Goods which are delivered in advance of the Performance Date are delivered at the risk of Seller and may, at Buyer's option, be returned at Seller's expense for delivery on the Performance Date and/or have payment thereof withheld by Buyer until the date on which payment would be due if the Goods were delivered on the Performance Date. In any event, with respect to Goods which are delivered in advance of the Performance Date, any discount period with respect to such Goods will begin to run from the Performance Date and risk of loss with respect thereto (if FOB final destination under the Order) will not pass to Buyer until the Performance Date.
 4. **Excusable Delays.** Neither Buyer nor Seller shall be liable for a performance failure with respect to the Order arising from causes or events beyond its reasonable control occurring without its fault or negligence. In the event that causes or events beyond Seller's reasonable control and without its fault or negligence, including without limitation labor disputes of any kind, prevent Seller from performing its obligations under the Order: (a) Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer; (b) Buyer may, at its option, while such excusable delay is pending, obtain alternative goods or services from another supplier and/or terminate the Order, in each case without liability under the Order; (c) if Seller provides Buyer a rebate or discount for purchases of such Goods or Services subject to the Order based on volume, any volumes of alternative goods or services purchased by Buyer pursuant to the foregoing clause (b) shall be counted with regard thereto; and (d) if Seller is unable for any reason to supply Buyer's total demands for Goods or Services under the Order, then, at Buyer's option, Seller must furnish or provide its available supply of such Goods or Services to Buyer on a percentage basis that is no less favorable than is provided to any other purchaser or Seller-affiliated internal user of such Goods or Services of Seller.
 5. **Buyer Rights.** Buyer reserves the right to make changes with respect to any or all of the following: (a) specifications, samples, instructions, data, drawings or other descriptions set forth or incorporated in the Order as to Goods to be manufactured or Services to be provided for Buyer; (b) methods of shipment, packaging, boxing, crating, packing, handling, storage, marking, routing, transportation or installation; and (c) place and time of delivery or other performance. If any such change causes an increase or decrease in the cost of, or the time required for, Seller's performance, an equitable adjustment mutually agreed by Buyer and Seller will be made in the Order's price or delivery performance schedule, or both. Any claim by Seller related to any adjustment to the Order under this Paragraph 5 of these Terms and Conditions is waived unless objected to in writing by Seller to Buyer within ten (10) days from receipt by Seller of a Purchase Order Change Notice issued by Buyer regarding the change to the Order. Changes to the Order are not binding on Buyer unless evidenced by a Purchase Order Change Notice issued by and signed by an authorized representative of Buyer.
 6. **Price.** The prices stated on the Order apply to all shipments of Goods made or Services rendered under the Order. Buyer shall have no obligation to honor invoices for Goods or Services at any increased prices unless any such increase shall have been confirmed in a written instrument executed by an authorized representative of Buyer and delivered by Buyer to Seller. If the price of any Goods or Services is not stated in the Order, the price for such Goods or Services will be the price last quoted by Seller to Buyer for such Goods or Services, or the prevailing market rate at the time of the Order, whichever is lower. No charges of any kind not stated on the Order will be allowed unless specifically agreed to in a written instrument executed by an authorized representative of Buyer and delivered by Buyer to Seller. All payments of Buyer under the Order are made conditional upon acceptance by Buyer of the Goods or Services and shall be subject to adjustment in accordance with Buyer's rights and remedies under the Order and at law or in equity for failure of Seller to meet the requirements of the Order.
 7. **Competitive Pricing.** Notwithstanding any provision of the Order to the contrary, if Buyer is offered the same or similar goods and/or services of equal quality and like quantity to Goods and/or Services being furnished under the Order at a price lower than that in effect under the Order, upon satisfactory proof thereof and with fifteen (15) days prior written notice to Seller, Seller shall either (a) meet such lower price(s) or (b) release Buyer to purchase such same or similar goods and/or services from parties offering them at such lower price(s) for the period during which Seller does not meet such lower price(s). If Seller provides Buyer a rebate or discount for purchases of such Goods or Services subject to the Order based on volume, any volumes of alternative goods or services purchased by Buyer pursuant to the foregoing clause (b) shall be counted with regard thereto.
 8. **Title and Warranties.** Seller will convey good title, free and clear of any liens or other adverse claims, to all Goods and/or Services provided under the Order, and warrants that all such Goods and Services: (a) will be furnished in strict accordance with the provisions of the Order; (b) will conform to any specifications, samples, instructions, data, drawings or other descriptions incorporated in the Order or otherwise furnished by Buyer; (c) will conform to industry standards and all applicable federal, state and local laws, regulations, rulings, orders and other legal requirements; (d) will be merchantable and free from any defect in design, material or workmanship; and (e) will be fit and sufficient for the purposes intended. Seller additionally warrants that no federal, state or local law, regulation, ruling, order or other legal requirement has been violated in the manufacture, transportation, installation, delivery or sale of the Goods or the performance of the Services covered by the Order. Buyer's approval of any specifications, samples, instructions, data, drawings or other descriptions prepared or provided by Seller will not relieve Seller of the foregoing obligations or its other obligations under the Order. In addition to any other rights or remedies Buyer may have, Buyer may utilize the remedies set forth in Paragraph 9 of these Terms and Conditions for defective, deficient or otherwise nonconforming Goods or Services with respect to Goods and/or Services not conforming to any of the foregoing warranties, whether or not such Goods and/or Services shall have been previously accepted by Buyer or any prior payments shall have been made by Buyer with respect thereto. Seller agrees that the foregoing warranties shall survive delivery, acceptance, inspection, test and use of, and payment for, the Goods and/or Services provided under the Order and shall inure to the benefit of Buyer and its customers.
 9. **Inspection.** During manufacture or performance, and/or within thirty (30) days after delivery of Goods and/or Services (notwithstanding any payment therefor during such thirty (30) day period, which payment shall not be deemed acceptance thereof), Buyer may inspect any Goods, related raw materials, work in process, Services or the results of the performance of Services which have been or will be manufactured, worked upon, produced, provided, performed or sold with respect to the Order. If, in Buyer's judgment, any of the Goods or Services are defective, deficient or otherwise not in conformity with the requirements of the Order, Buyer, in addition to its other rights and remedies, may: (a) reject the same for full credit; (b) retain the same and remedy any defects, deficiencies or nonconformities at Seller's expense; or (c) require prompt correction, replacement or reperformance of the same by Seller or Buyer's designee at Seller's expense with any such corrected, replaced or reperfomed Goods and/or Services being subject to the same warranties as provided in Paragraph 8 of these Terms and Conditions. Any Goods rejected by Buyer shall be at Seller's risk and expense and shall not thereafter be tendered to Buyer by Seller for acceptance without Buyer's advance written consent. Items rejected shall be removed promptly by Seller at its expense and at its risk. Any shipment, packaging, boxing, crating, packing, handling, storage, marking, routing, removal and transportation costs, charges and expenses incident to Buyer's exercise of its rights or remedies under the Order will be charged to Seller's account. Neither anything in the Order nor any exercise of Buyer's inspection rights shall release Seller from the obligation to make full and adequate testing and inspection of Goods and Services sold to Buyer under the Order. In addition to the rights and remedies set forth in these Terms and Conditions, Buyer retains all rights and remedies available to it at law or in equity. Final acceptance shall not be conclusive with respect to latent defects, fraud or gross mistakes or with respect to Buyer's rights and remedies under Paragraph 8 of these Terms and Conditions.
 10. **Services.** If the Order calls for Services to be performed by Seller, all Services performed and all materials used in connection therewith shall be at the risk and expense of and shall be replaced by Seller in the event of any damage or destruction thereof prior to delivery to and acceptance by Buyer. If the Order calls for Services to be performed by Seller upon any premises owned or controlled by Buyer and/or Buyer's customers, Seller will keep the premises and its work product free and clear of all mechanics' liens and will furnish Buyer with all certificates and waivers necessary to keep the premises and its work product free and clear of all mechanics' liens as provided by law. Whenever any property belonging to Buyer or Buyer's customers is in the possession of Seller or Seller's suppliers, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer. Seller will indemnify, defend and hold harmless Buyer and its affiliated companies and their respective customers, directors, officers, managers, employees and agents (collectively, "Buyer Indemnified Parties") against and from all such claims, demands, damages, claims, judgments, liabilities, losses, costs of settlement, attorney's fees, expenses and other costs and damages ("Adverse Consequences") made or brought under the workers' compensation laws of the state in which any such Services are performed under the Order or under any applicable federal compensation laws and will if requested furnish to Buyer a certificate showing that Seller is in compliance with the workers' compensation laws of such state and with any applicable federal compensation laws. Seller will also indemnify, defend and hold harmless Buyer and/or Buyer Indemnified Parties against and from all Adverse Consequences for any damage to property or injury to or death of persons caused by Seller or its affiliated companies or their respective directors, officers, managers, employees, subcontractors and agents in the performance of the Order.
 11. **Insurance.** Seller shall procure at its own cost and keep in force the following insurance, satisfactory to Buyer as to form and limits of liability, with a company rated "A-VII" or better by A.M. Best, until completion and final payment hereunder:
 - (a) If the Order calls for Services to be performed by Seller upon any premises owned or controlled by Buyer and/or Buyer's customers:
 - (i) Workers' Compensation insurance, as required by the workers' compensation laws of the state in which the Services are being performed, with a minimum insurance of \$500,000 per person.
 - (ii) Employer's Liability insurance, with minimum insurance of \$500,000 per occurrence.
 - (iii) General Liability and Property Damage insurance, including contractual liability insurance as required to cover liabilities, with minimum insurance requirements of:
 - (a) Bodily Injury Per Person of \$1,000,000;
 - (b) Bodily Injury Per Occurrence of \$2,000,000; and
 - (c) Property Damage Per Occurrence of \$1,000,000.
 - (b) Automobile Liability insurance, with minimum insurance requirements of:
 - (i) Bodily Injury Per Person of \$1,000,000;
 - (ii) Bodily Injury Per Occurrence of \$2,000,000; and
 - (iii) Property Damage Per Occurrence of \$1,000,000.
 - (c) Excess Liability insurance above said Employer's Liability, General Liability and Automobile Liability insurance with a combined single limit for Bodily Injury and Property Damage of not less than \$4,000,000 per occurrence, unless a larger amount is specified elsewhere in the Order.
 - (d) Where work is performed on a Buyer automobile or trailer or any other Buyer property on Seller's premises, Garage Keeper Liability insurance with minimum coverage of \$50,000 per occurrence.
 - (e) In all other cases, General Liability and Property Damage insurance, including contractual liability insurance as required to cover liabilities, and Excess Liability insurance, which together provide minimum coverage of \$1,000,000 per occurrence, unless a larger amount is specified elsewhere in the Order.
- Upon Buyer's written request, Seller shall cause Buyer to be included as an additional insured and include a waiver of subrogation in favor of Buyer under any or all of the applicable policies above. Insurance under the applicable policies above shall be primary to any other insurance, self-insurance or self-retention of Buyer. Buyer's affiliated companies or any other person or entity (without regard to any "other insurance" clauses). Prior to the commencement of any work hereunder, evidence of such insurance, in policy or certificate form, shall be delivered to the representative of Buyer identified in the Purchase Order. Where any part of the Order is performed by a subcontractor of Seller (which subcontracting shall be effected in accordance with Paragraph 22 of these Terms and Conditions), evidence of the foregoing insurance on behalf of such subcontractor similarly shall be provided by Seller to the representative of Buyer identified in the Purchase Order. Seller shall notify the representative of Buyer identified in the Purchase Order in writing in advance of any changes made or proposed with respect to the policies related to the foregoing insurance requirements.
12. **Cancellation.** In addition to any other provisions contained in these Terms and Conditions for the cancellation or termination of the Order, Buyer may cancel the Order, for any reason or no reason (notwithstanding the existence with respect to Seller of any of the causes or events specified in Paragraph 3 of these Terms and Conditions), in whole or in part, by written notice to Seller on the condition that Buyer pay to Seller the actual net cost Seller incurred in good faith in connection with the Order prior to Seller's receipt of the cancellation notice; provided, however, that in no event shall Buyer be liable for Seller's commitments or production arrangements in excess of the amount, or in advance of the time, necessary to satisfy the Order on the Performance Date.
13. **Packing.** No charges for shipment, packaging, boxing, crating, packing, handling, storage, marking, routing or transportation will be chargeable to Buyer without the specific advance written consent of Buyer. Seller will pack Goods in accordance with Buyer's instructions and include a copy of the packing slip with each shipment or each bill of lading indicating, as applicable, the part number and quantity of pieces shipped for each part. Seller will reimburse Buyer for all Adverse Consequences incurred as a result of improper shipment, packaging, boxing, crating, packing, handling, storage, marking, routing or transportation.
14. **Labeling.** Seller shall cause Buyer's purchase order number for the Order (the "PO Number") to appear conspicuously on each package, box or other type of container for Goods. In the event such PO Number does not appear conspicuously on each such package, box or other type of container, Buyer at its option may return at Seller's expense the Goods delivered in each such improperly marked or unmarked package, box or other type of container.
15. **Documents.** When Goods are invoiced by Seller but shipped by another person or entity, the invoice for such Goods must bear the name of the shipper and the location from which the shipment originated. ALL SHIPMENTS MUST CONTAIN PACKING LISTS SHOWING: PO NUMBER; DESCRIPTION OF GOODS; QUANTITY; AND PART NUMBER. Buyer's determination of the quantity of any Goods shipped without a packing list shall be final.
16. **Routing.** Seller will route shipments as specified, and if not specified shipments are to be routed via the most economical method that will result in such shipments meeting the Performance Date.
17. **Risk of Loss.** Unless the Order expressly provides otherwise, delivery to and risk of loss of Goods remains with Seller until delivery to a specified unloading facility at the final destination.

18. **Taxes.** Seller's prices shall be exclusive of all federal, state or local sales, use or excise taxes levied upon, or measured by, the sale, the sales price, or use of goods or materials required in the performance of the Order. Seller shall list separately on its invoice any such taxes lawfully applicable to any Goods or Services and payable by Buyer with respect to which Buyer does not furnish to Seller lawful evidence of exemption.
19. **Extras; Substitutions.** No substitution of materials or accessories for Goods shall be made without Buyer's advance written consent. No charges for extras shall be made unless such extras have been ordered in writing by Buyer and the price agreed upon by Buyer and Seller.
20. **Set-Off.** Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliated companies against any amount payable at any time by Buyer in connection with the Order.
21. **Nonwaiver.** Any waiver or failure of Buyer to require strict compliance with the provisions of the Order in any respect is not deemed a waiver of Buyer's rights to otherwise insist upon strict compliance with the provisions of the Order or future orders.
22. **Nonassignable.** The Order and monies due under the Order may not be assigned in whole or in part without the advance written consent of Buyer, and any purported assignment without such advance written consent shall be void. Seller shall not subcontract or in any other manner delegate to any other party the performance of any work or the supplying of any Goods or Services under the Order without the advance written consent of Buyer.
23. **Headings.** The headings in these Terms and Conditions are for reference only and shall not in any way affect the meaning or interpretation of the Order.
24. **Rights.** Buyer retains all rights and remedies available to it at law or in equity, in addition to those set forth in these Terms and Conditions.
25. **Default.** In the event Seller (a) is insolvent, (b) makes a general assignment for the benefit of creditors, (c) admits in writing its inability to pay debts as they mature, (d) has a trustee or receiver appointed by any court for it or any substantial part of Seller's assets, (e) has a proceeding instituted under any provision of the Bankruptcy Code or any state insolvency law by or against it which is acquiesced in, or is not dismissed within thirty (30) days, or results in an order for relief under the Bankruptcy Code or any adjudication of insolvency, (f) fails, or appears to be unable, to perform any of its obligations in accordance with the terms of the Order, including meeting the Performance Date, or (g) directly or indirectly undergoes any change in control or other extraordinary transaction without the advance written consent of Buyer, then Buyer may cancel the Order in whole or in part without liability and/or pursue any further rights or remedies available under the Order or at law or in equity. No waiver by Buyer of a breach by Seller of any provision of the Order shall constitute a waiver of any other breach of such provision. All of Buyer's rights and remedies under the Order shall be cumulative and not exclusive.
26. **Indemnification.** Seller shall indemnify, defend and hold harmless Buyer and Buyer Indemnified Parties against and from any and all Adverse Consequences arising out of, or in any way related to: (a) the Order or performance under the Order; (b) any actual or alleged defect in Goods or Services purchased under the Order; (c) the breach of any obligation or warranty under the Order; (d) any actual or alleged infringements of any trademark, patent, trade secret, mask work, copyright or other proprietary right of any third party, or any unfair competition right, related to Goods or Services purchased under the Order; (e) any act or omission of Seller or its affiliated companies or their respective directors, officers, managers, employees, subcontractors or agents; (f) the delivery, condition, use or operation of Goods or Services purchased under the Order, whether such Goods are in the same mode as when delivered under the Order or whether they have been used in the manufacture of, and become part of, equipment, machinery or goods sold by Buyer to third parties; and/or (g) production downtime due to Seller's failure to correctly fulfill the Order on time or failure to route Goods pursuant to the Order. Seller further agrees to, and will assume on behalf of Buyer, upon its demand (without regard to the real or apparent merits of said action), the defense of any court, agency or arbitration action which may be brought against Buyer potentially involving Adverse Consequences which would be subject to indemnification, defense and hold harmless obligations of Seller under the Order. Seller shall be obligated to fulfill its indemnification, defense and hold harmless obligations under the Order regardless of whether any Adverse Consequences result from the sole, concurrent or partial negligence of Buyer.
27. **LIMITATIONS OF BUYER'S LIABILITY; STATUTE OF LIMITATIONS.** IN NO EVENT SHALL BUYER BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY BREACH BY BUYER OR ACTION ON THE PART OF BUYER RELATING TO THE ORDER, BUYER'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE ORDER, OR FROM THE PERFORMANCE OF THE ORDER, ACTIONS TAKEN IN CONNECTION WITH THE ORDER OR BREACH OF THE ORDER, SHALL IN NO CIRCUMSTANCE EXCEED THE PRICE ALLOCABLE TO SUCH GOODS OR SERVICES OR UNIT THEREOF WHICH GIVE RISE TO THE CLAIM. BUYER SHALL NOT IN ANY CIRCUMSTANCE BE LIABLE FOR PENALTIES OR PUNITIVE, EXEMPLARY OR OTHER SIMILAR DAMAGES OF ANY TYPE OR DESCRIPTION, ANY ACTION RESULTING FROM ANY BREACH BY BUYER OR ACT OR OMISSION ON THE PART OF BUYER RELATING TO THE ORDER MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.
28. **Independent Contractor.** Regardless and independent of any administrative, judicial or other governmental determination to the contrary, no persons employed by Seller or Seller's contractors or suppliers in connection with manufacture, production, performance or delivery of Goods or Services under the Order shall be held or construed to be Buyer's employees under any federal, state or local law, regulation, ruling, order or other legal requirement (including those dealing with income or social security tax withholding, unemployment or workers' compensation, or any other law dealing with the obligations of an employer to its employees), and Seller shall indemnify, defend and hold harmless Buyer and Buyer Indemnified Parties against and from all taxes, contributions, assessments or other costs or Adverse Consequences imposed by or relating to any such law, regulation, ruling, order or other legal requirement.
29. **Legal Compliance.** In the performance of the Order, Seller shall comply with all applicable federal, state and local laws, regulations, rulings, orders and other legal requirements, and, without limiting the foregoing, shall hold all permits and licenses required for the performance of the Order. As part of Seller's obligations under the foregoing sentence, Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
30. **State Law.** The Order is governed by and shall be construed and enforced in accordance with the laws of the State of Ohio, including the terms of the Uniform Commercial Code as adopted and in effect in the State of Ohio, without regard to conflict of law principles. All actions commenced pursuant to the Order shall be brought in a court of competent jurisdiction residing in the State of Ohio.
31. **Disclosure.** Seller will not advertise, publish or otherwise disclose that Buyer has offered or agreed to purchase Goods or Services from Seller without Buyer's advance written consent. Seller will not, without Buyer's advance written consent, disclose any nonpublic information, including without limitation plans, specifications, samples, instructions, data, drawings, descriptions, confidential information, know-how, discoveries or production methods, furnished (whether in written, oral or electronic form) to Seller by Buyer, or on Buyer's behalf, other than as necessary to personnel of Seller directly involved in filing the Order or to the supplier of goods, materials or services required to complete/fill the Order. Seller shall take appropriate steps to cause any such personnel or other persons to whom such information is or has been disclosed to comply with the same confidentiality obligations as are applicable to Seller under the Order and agrees to enforce the terms of the Order as to such personnel and other persons and to be responsible to Buyer for any failure of such personnel or other persons to abide by the terms of the Order.
32. **Patent and Copyright Indemnification.** Seller represents and warrants that neither Goods or Services furnished under the Order, nor the sale or use of such Goods or Services or the results of the performance of such Services (alone or in combination with the specifications, requirements or intended uses of Buyer), infringe or will infringe upon or violate any trademarks, patents, trade secrets, mask works, copyrights or other proprietary rights of third parties, or any unfair competition right. Seller agrees to indemnify, defend and hold harmless Buyer and Buyer Indemnified Parties against and from any and all Adverse Consequences due or arising from any such infringement or violation or alleged infringement or violation. In addition, in the event the use of any Goods or Services furnished under the Order, or the results of the performance of any such Services, is enjoined due to any such infringement or violation or alleged infringement or violation, Buyer may, at its option, pursue any remedy or remedies available under the Order or at law or in equity, including without limitation requiring Seller to either procure for Buyer the right to continue using such Goods, Services or results of the performance of such Services, modify them so they become non-infringing or remove them and refund the total purchase price thereof.
33. **Patent License.** Seller, as part consideration for the Order and without further cost to Buyer, hereby grants to Buyer an irrevocable, non-exclusive, royalty-free right and license to use, sell, cause to be manufactured and manufacture products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with Seller's performance of the Order, and Seller hereby grants to Buyer a license to repair, rebuild or relocate and have repaired, rebuilt or relocated Goods or the results of the performance of Services purchased by Buyer under the Order. Seller further grants according to the terms of the Order a royalty-free right and license to use any software with Goods or the results of the performance of Services specified in the Order, or Goods or results of the performance of Services themselves if such Goods or results of the performance of Services are software.
34. **Unenforceability.** In the event that any provision in the Order is deemed by a court of competent jurisdiction in a controversy arising under the Order to be unenforceable under either state or federal law, then that provision shall be adjusted to the minimum extent required to be enforceable under such state or federal law.
