



GRAHAM STAMPING COMPANY

PURCHASE ORDER TERMS & CONDITIONS FOR SUPPLIERS

1. APPLICABILITY OF TERMS & CONDITIONS

- a. These Graham Stamping Company Inc., (“Buyer”; located at 1700 Broadway Road, Hermitage, Pa 16148) Terms & Conditions are applicable to all purchases of products, goods, raw materials, and supplies from Suppliers. The purchase of any and all products, goods, raw materials, and supplies from Suppliers shall be governed by these Term & Conditions and the applicable Purchase Order, which is hereby incorporated by reference as if set forth at length, completed by Buyer. Each and every Purchase Order revision, if any, shall be governed by these Term & Conditions and the Purchase Order and revision, which is hereby incorporated by reference as if set forth at length.
- b. These Terms & Conditions are the only terms and conditions applying to the purchase of products, goods, raw materials, and supplies by Buyer.
- c. Supplier shall not be deemed to have waived any of these Term & Conditions if Supplier fails to object to the provisions appearing herein or incorporated by reference.

2. ACCEPTANCE ENTIRE AGREEMENT-MODIFICATION

- a. Supplier accepts these Terms & Conditions and a legally binding agreement shall be formed between Buyer and Supplier when any one of the following occurs:
 - i. Supplier commences manufacturing product for Buyer pursuant to any Purchase Order or Purchase Order revision;
 - ii. Supplier purchases any material, die, part, and/or machinery whatsoever for manufacturing product pursuant to any Purchase Order or Purchase Order revision that Supplier would not otherwise purchase in the normal course of business;
 - iii. Supplier performs any other conduct that recognizes the existence of a contract between Buyer and Supplier with respect to the subject matter of the Purchase Order or Purchase Order revision.
- b. If prior to final acceptance, any goods, services, or work product are found to be defective, deficient, or not as specified, or if Buyer is entitled to revoke acceptance of them for any other reason under these Terms & Conditions, Buyer may reject or revoke acceptance, or require delivery at an equitable reduction in price, at Buyer’s option. Supplier must reimburse Buyer for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, deficiencies, fraud, or such gross mistakes as essentially amount to fraud even if such gross mistakes were not contemplated prior to formation of any contract. Acceptance of performance does not waive the right to claim damages for breach of contract. Buyer is not obligated to notify Supplier of, or to pay Supplier for, goods shipped or provided in excess of those stated in the Purchase Order or any revision thereof. Buyer may, in its discretion, reject over-shipments or additional work product not specified in the Purchase Order. If for any reason Supplier fails to return to Buyer the signed acknowledgement copy of any Purchase Order, any conduct by Supplier that recognizes the existence of a contract pertaining to the subject matter thereof will constitute unqualified acceptance by Supplier of the Purchase Order and all of these Terms and Conditions. If any Purchase Order has been issued by Buyer in response to Supplier's offer and if any of the terms

{R1078741.1 }





herein are additional to or different from the terms of such offer, then the issuance of the Purchase Order by Buyer will constitute an acceptance of such offer, subject to the express condition that the Purchase Order and these Terms & Conditions constitute the entire agreement between Buyer and Supplier with respect to the subject matter thereof and the subject matter of such offer. Further, Supplier is deemed to have so assented and acknowledged unless Supplier notifies Buyer to the contrary in writing within seven (7) calendar days of receipt of the Purchase Order and these Terms & Conditions. Any reference by Buyer to Supplier's proposal is solely for the purpose of incorporating the description and specification of products, goods, raw materials, and/or supplies contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of Buyer's Purchase Order.

- c. Notwithstanding the foregoing, Buyer's offer to buy products, goods, raw materials, and/or supplies from Supplier is expressly conditioned upon Supplier's acceptance of these Terms & Conditions. Any additional terms or conditions proposed by Supplier are unacceptable to Buyer and are hereby **expressly rejected** and will not become part of the contract between Buyer and Supplier unless otherwise stated in a writing signed by Buyer's authorized representative.

3. TIME PERIOD AND EXCUSABLE DELAY

- a. Subject to Buyer's termination rights, the agreement between Buyer and Supplier is for the time period required to manufacture and ship the product units purchased by Buyer under the Purchase Order and any revision as further evidence therein.
- b. Supplier will not be deemed to be in default on account of delays in the delivery of goods or in the performance of services or any other act to be performed by Supplier under the Purchase Order and these Terms & Conditions due to any cause to the extent it is beyond Supplier's control and not occasioned by Supplier's fault or negligence, provided that promptly upon the occurrence of any event which may result in a delay in the delivery of products, goods, raw materials, and/or supplies, Supplier gives immediate notice to Buyer, which notice will identify such occurrence and specify the period of delay which may be reasonably expected. During that period of such delay or failure to perform by Supplier, Buyer, at its sole option, may purchase products, goods, raw materials, and/or supplies from other sources and reduce its Purchase Order to Supplier by such quantities without liability to Supplier or have Supplier provide the goods by other sources and quantities requested by Buyer at the price set forth in the Purchase Order. If requested by Buyer, Supplier, within ten (10) days of such request, must provide adequate assurances that the delay will not exceed thirty (30) days. In the event delivery of the products, goods, raw materials, and/or supplies will be delayed due to any cause beyond Supplier's control and not occasioned by Supplier's fault or negligence for a period of more than thirty (30) days after the end of the calendar month in which delivery is otherwise required, Buyer will have the option to terminate the Purchase Order upon written notice given to Supplier within five (5) business days after the expiration of such thirty (30) day period, and such termination will discharge all obligations and liabilities of the parties hereunder with respect to undelivered products, goods, raw materials, and/or supplies to be furnished hereunder.

4. MODIFICATION OF THIS AGREEMENT

- a. No modification or waiver of these Terms & Conditions shall be binding on Buyer unless made in writing and signed by Buyer's authorized representative. No additional terms and conditions shall be binding on Buyer unless made in writing and signed by Buyer's authorized representatives.

{R1078741.1 }





5. ASSIGNMENT AND DELEGATION; CHANGES

- a. Supplier shall not subcontract the performance of all or any part of any Purchase Order or assign all or any of its rights under a Purchase Order without the prior written approval of an authorized representative of Buyer. Buyer will not unreasonably withhold approval provided that the Assignee can supply the subject products, goods, raw materials, and/or supplies at the same price and quality as the original Supplier. Any obligation to pay an assignee is subject to offset for any claims Buyer has against Supplier, whether or not arising under any particular Purchase Order.
- b. At any time prior to the time title has passed to Buyer with respect to the subject products, goods, raw materials, and/or supplies, an authorized representative of Buyer may make changes within the general scope of the Purchase Order, including changes in drawings, designs, specifications, packaging, time and place of delivery, nature and duration of services, and method of transportation, by giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of a Purchase Order, an appropriate, equitable adjustment must be made to the Purchase Order **in writing**. No change by Supplier will be recognized without signed, written approval of an authorized representative of Buyer. Any claim of Supplier for an adjustment under this paragraph will be deemed to have been waived unless made in writing within ten (10) days from the date of receipt by Supplier of notification of such change. Nothing in this paragraph will excuse Supplier from proceeding with performance of the Purchase Order as modified.
- c. If Supplier is compelled to use products, goods, raw materials, and/or supplies other than what is required by the Purchase Order, Supplier shall promptly notify Buyer in writing and Buyer shall then have the option to cancel the Purchase Order without penalty to Supplier or Buyer may agree in writing to the modification.

6. BANKRUPTCY

- a. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by, or against Supplier, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, Buyer will be entitled to cancel the Purchase Order without liability. Any person or entity to which the Purchase Order is assigned pursuant to the provisions of Bankruptcy Code 11 U.S.C. Section 101, et seq., is deemed without further act or deed by Buyer to have assumed all of the obligations arising under the Purchase Order on and after the date of such assignment. Any such assignee must, upon demand, execute and deliver to Buyer an instrument confirming such assumption.

7. INSPECTIONS

- a. Supplier agrees to permit access to its facilities, subcontractor facilities, and Supplier processes for producing the subject products, goods, raw materials, and/or supplies, at reasonable times for inspection of the goods or services covered under the Purchase Order. Buyer will also have the right to test, at its own cost, the products, goods, raw materials, and/or supplies supplied under the Purchase Order. Neither inspection at Supplier's facilities nor testing will constitute final acceptance of the products, goods, raw materials, and/or supplies, nor relieve Supplier of liability for any defects as a result of manufacture or delivery of such goods under a particular order.
- b. Inspection by Buyer does not constitute a waiver of liability of Supplier nor will it constitute a waiver of any rights by Buyer. If Buyer determines the products, goods, raw materials, and/or

{R1078741.1 }





supplies are noncompliant, Supplier will be responsible for the payment of all costs incurred by Buyer for testing, inspection, and correction. Supplier must comply with all quality assurance procedures specified by Buyer, including those set forth in any manual on Supplier quality standard procedures.

8. PACKING, SHIPPING, AND RISK OF LOSS

- a. Supplier represents and warrants that all products will be suitably prepared for shipment and packed in accordance with Buyer's specifications as further detailed in Buyer's Purchase Order and any revision thereof.
- b. Buyer has the right to specify the shipment carrier and/or method of transportation, and agrees to compensate Supplier for the excess cost of any specific shipment method over and above what Supplier has quoted to Buyer as the usual cost of shipping the purchased products, goods, raw materials, and/or supplies. Buyer shall not have to pay additional costs of shipping if, through Supplier's fault, a shipment of purchased products must be shipped by an expedited transportation method to meet delivery deadlines.
- c. Buyer agrees that any contrary provisions of UCC Sections 2-509 and 2-510 or other provisions of the UCC or other applicable Law shall not apply to the Purchase Order.
- d. Title to and risk of loss of purchased products, goods, raw materials, and/or supplies shall pass to Buyer only upon Supplier's delivery of goods to 1700 Broadway Road, Hermitage, Pa 16148 or such other location as designated in writing by Buyer. Any rightful rejection or revocation of acceptance of any purchased products by Buyer shall shift the title and risk of loss of such purchased products, wherever located, back to Supplier until the purchased products, goods, raw materials, and/or supplies or replacement products, goods, raw materials, and/or supplies are physically returned to 1700 Broadway Road, Hermitage, Pa 16148.
- e. Supplier represents and warrants that all containers, pallets, drums, carboys or like packaging materials will be in good condition, clean, and adequate for the purpose intended and if they are to be returned, must be shipped by Supplier.
- f. Supplier agrees to properly pack, mark, and ship goods in accordance with the requirements of applicable law, including the North American Trade Agreement or related implementing regulations, including the requirement to have all goods marked with a country of origin designation when such goods are manufactured outside of the United States, and the requirements of any involved carrier in a manner to secure the lowest transportation and tariff costs. The marks on each package and identification of the goods in shipping, material, bills of lading, and other invoices must be sufficient to enable Buyer to identify the goods purchased, which will include but not be limited to Buyer's part number and Purchase Order number on all packing slips and invoices. Supplier further agrees to supply Buyer SPC data as requested, and upon request, bar coding documentation with each shipment.

9. DELIVERY

- a. Supplier represents and warrants that it will use best efforts to deliver the purchased products, goods, raw materials, and/or supplies to Buyer at the times specified in Buyer's Purchase Order.
- b. Supplier shall be responsible for any additional cost, expense, loss or damage Buyer may sustain as a result of any delivery delay unless such delay is in accordance with these Terms & Conditions.

10. WARRANTY

{R1078741.1 }





- a. Supplier warrants that the products, goods, raw materials, and/or supplies provided under the Purchase Order are conveyed with good title, free from any competing claims of ownership, security interests, and liens and free from any claims of copyright, trademark, or patent infringement. Unless modified elsewhere in these terms and conditions, Supplier warrants that, for one year after acceptance by Buyer, the products, goods, raw materials, and/or supplies will: strictly comply with all of Buyer's specifications and instructions (including but not limited to those stated on the Purchase Order and these Terms & Conditions) and with any samples furnished by, or supplied to, Buyer; be free from defects in workmanship and material; be fit for the intended purposes for which they are used by Buyer; with the variations permitted by the Purchase Order, be of even kind, quantity, and quality within each unit and among all units; be adequately contained, packaged, and marked as the Purchase Order may require; and conform to the written or oral promises or affirmations of fact made by Supplier. Inspection or testing of or payment for the goods, services, or work product does not affect the warranties set forth herein. These warranties run to Buyer, its successors, assigns, and customers, and the users of its products. Supplier agrees to replace or correct defects of any products, goods, raw materials, and/or supplies not conforming to the foregoing warranties promptly, without expense to Buyer, when notified of such nonconformity by Buyer. In the event of failure by Supplier to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Supplier, may make such correction or replace such goods and charge Supplier for the cost incurred by Buyer.

11. DISCLOSURES AND SPECIAL WARNINGS

- a. Supplier agrees to furnish to Buyer, at Supplier's expense, material safety data sheets for all items covered by the Purchase Order. In addition, if requested by Buyer, Supplier must promptly furnish to Buyer, in such form and detail as Buyer may direct, a list of all ingredients in the goods purchased under the Purchase Order, the amount of one or more of the ingredients, and information concerning any changes in or additions to such ingredients. Prior to and with the shipment of products, goods, raw materials, and/or supplies under the Purchase Order, Supplier agrees to furnish to Buyer sufficient warning and notice in writing, including appropriate labels (Physical, Health Hazard), on goods, containers, and packaging of any kind, a statement of hazardous material which is an ingredient or any part of the goods under the Purchase Order, together with such special handling instruction as may be necessary to advise carriers or employees of Buyer how to exercise any measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of goods purchased under the Purchase Order and use of and later disposal of containers and packaging of products, goods, raw materials, and/or supplies shipped under the Purchase Order to Buyer.

12. CERTIFICATION

- a. Upon Buyer's written request, Supplier warrants that it will provide all appropriate certification(s) that the purchased products comply with Buyer's Purchase Order specifications.

13. WORKS MADE FOR HIRE

- a. In the event that Supplier creates, drafts, or in any way produces any creative works, research data, reports, designs, recordings, writings, software code, graphical representations or other intellectual property ("Works") pursuant to the requirements of the Purchase Order, such Works

{R1078741.1 }





will be treated as works for hire under the U. S. copyright, trademark, and patent laws and will become the sole and exclusive property of Buyer. **Buyer will, at all times, retain ownership in and the right to any Works to be delivered under the Purchase Order and Supplier hereby assigns all of Supplier's right, title, and interest in such Works to Buyer.**

14. INDEMNITY

- a. Supplier will indemnify and save harmless Buyer, its employees, representatives, agents, officers, directors, affiliated companies, and invitees from and against all liability, demands, claims, loss, cost, damage and expense by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with the performance of this order which is occasioned by the actions or omissions of Supplier or its affiliates, officers, directors, employees, representatives, and/or agents. Supplier hereby represents and warrants that it will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, public liability, property damage liability, product liability, completed operations liability, liability for claims made by government agencies, claims arising out of allegations of Supplier infringing upon the intellectual property rights of third parties, and contractual liability in appropriate amounts as set forth in Buyer's Purchase Order and if no amounts are set forth, then in amounts acceptable to and approved by Buyer but in no event shall such amounts be less than minimum statutory requirements, if any, of the jurisdiction where Supplier's headquarters is located. Supplier will, if requested by Buyer, furnish certificates of insurance indicating the foregoing coverage.

15. PATENT AND COPYRIGHT INDEMNIFICATION

- a. Supplier will indemnify Buyer, its successors, and customers for, and hold Buyer harmless from all losses, liabilities, lawsuits, claims, expenses (including attorney's fees), costs, and judgments resulting from or based upon claims that the products, goods, raw materials, and/or supplies are or were defective or deficient, of warnings or failures to warn, of mislabeling of the materials, of late delivery or non-delivery of materials, services, or work product or of any claims of infringement or inducement to infringe by a third party of any copyright, patent, trademark, trade name, false advertising or other intellectual property rights, or of alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Supplier's actions.
- b. Further, Supplier agrees to waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim in any way related to a claim asserted against Supplier or Buyer for patent infringement, trademark infringement, copyright infringement, trade name misappropriation, false advertising or the like, including claims arising out of compliance with specifications furnished by Buyer. Additionally, Supplier agrees to grant Buyer a worldwide, nonexclusive, royalty-free license to repair and have repaired, to reconstruct and to have reconstructed the products, goods, raw materials, and/or supplies ordered under the Purchase Order. Supplier assigns to Buyer all right, title, and interest in and to all patents, trademarks, copyrights, and mask work rights in any materials created for Buyer under any Purchase Order. Supplier agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which Supplier has disclosed or may hereinafter disclose to Buyer in connection with the goods or services covered by the Purchase Order.

16. PRICES & TAXES

{R1078741.1 }



- a. For all purchases of products, (i) Buyer shall not be billed at prices higher than those stated in Buyer's Purchase Order unless acts of god or government cause materials for Buyer's purchase to increase by twenty-five (25%) or more within the time period between Buyer's execution of Buyer's Purchase Order and Supplier's actions to consummate the Purchase Order as detailed in Section 2 of these Terms & Conditions.
- b. If no price is shown on Buyer's Purchase Order, Supplier shall notify Buyer or Buyer's authorized agent of the price and Buyer must accept such price in writing prior to Supplier consummating the Purchase Order.
- c. Unless otherwise specified on Buyer's Purchase Order the price stated shall include all charges for packing, hauling, storage and transportation **Cost, Insurance, Freight (CIF)** to Buyer's delivery dock.
- d. Except as otherwise required by federal or state Laws, Supplier agrees to pay any federal, state or local tax, value added tax, use tax, duties, import fees or other taxes or assessments which may be imposed upon the purchased products. These taxes shall be included in the price stated to Buyer.
- e. All prices on Buyer's Purchase Order shall be in United States Dollars even if Supplier is located outside of the United States. Buyer and Supplier shall agree on the rate of exchange at the time that Buyer executes Buyer's Purchase Order. If the parties fail to agree, Buyer shall have the benefit of the lower exchange rate and it shall be the agreed upon exchange rate.
- f. All taxes applicable to Buyer and paid by Supplier will be included in and shown separately on the invoice to Buyer.

17. PAYMENT

- a. To be paid, Supplier **must submit an itemized invoice** referencing a valid Purchase Order number together with proof of shipment, completion, and/or delivery. The invoice must specify the products, goods, raw materials, and/or supplies provided, including item number, and a description of items, sizes, quantities, and unit prices, which must match the description in the Purchase Order, the date or dates of delivery; and the specific dollar amount owed. Supplier must be paid upon completion of the entire Contract unless a schedule of progress payments for work in progress is agreed in writing with Buyer. Invoices for progress payments must specify the actual work performed. No charges will be accepted for boxing, crating, drayage, or storage unless specified in writing by Buyer.
- b. Unless otherwise agreed in writing, invoices are paid **net sixty (60) days** from the date of receipt of products, goods, raw materials, and/or supplies and not on the basis of Supplier's invoice date. Payment of invoices will not constitute acceptance of the goods and will be subject to adjustment for shortages, defects, and other failures of Supplier to meet the requirements of the Purchase Order. Buyer's tender of payment by check is sufficient, provided such check is honored upon presentation to Supplier's Bank.

18. FORCE MAJEURE

- a. Except for payment of sums due, neither party will be liable to the other nor deemed in default under the Purchase Order if and to the extent that such party's performance of the Purchase Order is prevented by reason of Force Majeure. The term "Force Majeure" means an unforeseeable occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, Force Majeure includes acts of God; acts of

{R1078741.1 }





the public enemy; war; riots; wildcat strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring Force Majeure which such party is unable to prevent by exercising reasonable diligence.

19. TERMINATION

- a. Buyer may terminate the Purchase Order for convenience by giving Supplier fifteen (15) days' written notice of termination. Upon termination for convenience: Supplier will, upon receipt of notice from Buyer, discontinue work in connection with the Purchase Order, cease order materials therefore, and use its best efforts to cancel existing orders for materials needed for the terminated portion; and Buyer will consider in good faith any documented request by Supplier for reimbursement of costs incurred.
- b. A non-breaching party may terminate the Purchase Order without penalty for the failure of the other party to comply with the Purchase Order by giving that other party thirty (30) days' written notice of the failure to comply. Termination of the Purchase Order by Buyer will not relieve Supplier of its obligations or liabilities under the applicable provisions of the Uniform Commercial Code. Buyer, upon termination of the Purchase Order, will not be required to make any payments for finished goods, work-in-process, or other raw materials fabricated or procured by Supplier in amounts in excess of those authorized for delivery by the Purchase Order nor for any undelivered goods which are in Supplier's standard stock or which are readily marketable. For requested reimbursement for production material, Buyer will only consider claims supported by Buyer's Purchase Orders, schedules or forecast for three (3) weeks of requirements for finished goods and five (5) additional weeks for WIP and raw material. Payments made under this paragraph may not exceed the aggregate price payable by Buyer for finished goods which would be produced by Supplier under delivery or release schedules outstanding at the date of termination. Except as provided in this paragraph, Buyer will not be liable for and will not be required to make payments to Supplier directly or on account of claims of Supplier's subcontractor for loss of anticipated profit, unabsorbed overhead, interest on claims, product development, or engineering costs and facilities, and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative charges from termination of the order. Within sixty (60) days of the effective date of termination, Supplier must submit a comprehensive termination claim to Buyer with sufficient supporting data and evidence to permit Buyer to audit, and will thereafter promptly furnish such supplemental or supporting information as directed by Buyer and will give to Buyer, its agents, or representatives, the right to audit and examine all books, records, facilities, work material, inventory, products, designs, records, reports, or other items that relate to the termination claim of Supplier.

20. PROPERTY RIGHTS

- a. All tools, equipment dies, gauges, models, drawings, supplies, fixtures, molds, patterns, or other materials furnished by Buyer to Supplier or made by Supplier for the purpose of the Purchase Order, or to be paid for by Buyer, and all replacements thereof and materials fixed or attached thereto, are and remain the property of Buyer. Supplier will bear the risk of loss or damage to Buyer's property.

21. EVENTS OF DEFAULT

{R1078741.1 }



- a. Seller shall be deemed to be in default in the event of: (i) delay in or failure of delivery of purchased products by sixty (60) or more days; (ii) delivery of purchased products that are nonconforming in any other way and Seller fails to cure such nonconformity; (iii) breach of warranty; and (iv) breach of any provision of Buyer's Purchase Order and/or these Terms & Conditions.
- b. Buyer shall be deemed to be in default in the event of: (i) failure to pay the purchase price for purchased goods pursuant to Section 12 of these Term & Conditions; (ii) refusal to accept conforming purchased products when delivered; (iii) refusal to accept conforming purchased products in cure of Seller's delivery of nonconforming purchased products pursuant to Section 7.

22. BUYER'S REMEDIES UPON DEFAULT

- a. Upon default by Seller, Buyer will be entitled to recover its costs of cover, lost sales and profits, other incidental and consequential damages, and will be entitled to all other rights and remedies available under Buyer's Purchase Order, the UCC and at law and in equity and may (but will not be obliged) to do any or all of the following: (i) reject or revoke acceptance of any or all of the purchased products if such products are nonconforming and return them to Seller at Seller's own risk and expense; (ii) require Seller to repair or replace rejected nonconforming purchased products, or to provide a full refund of the price of the rejected nonconforming purchased products; (iii) and/or immediately terminate Buyer's Purchase Order without obligation or liability whatsoever with respect to purchased products not yet delivered to Buyer at the time of such termination. Buyer's decision to pursue any remedy shall not be deemed to be an election not to pursue any other remedy at the same time or any other time. In all cases, Buyer shall not be entitled to recovery of its attorney's fees and expenses.

23. SELLER'S REMEDIES UPON DEFAULT

- a. Upon default by Buyer, Seller will be entitled to recover its costs of cover, lost sales and profits, other incidental and consequential damages, and will be entitled to all other rights and remedies available under Buyer's Purchase Order, the UCC and at law and in equity and may (but will not be obliged) to do any or all of the following: immediately terminate Buyer's Purchase Order without obligation or liability whatsoever with respect to purchased products not yet delivered to Buyer at the time of such termination. Seller's decision to pursue any remedy shall not be deemed to be an election not to pursue any other remedy at the same time or any other time. In all cases, Seller shall be entitled to recovery of its reasonable attorney's fees and expenses.

24. CONFIDENTIALITY

- a. During production of the goods or provision of the services and thereafter, Supplier will retain in confidence, and will not disclose to any third party, without the prior written consent of Buyer, the specifications, drawings, information, or any other data or information furnished to Supplier by Buyer ("Buyer's Confidential Information"); provided that Supplier may, during production, reveal Buyer's Confidential Information to selected employees of Supplier who have a need to know and who have the same obligation of confidentiality as does Supplier. Supplier and the selected employees (referred to above) will not use Buyer's Confidential Information for any purpose other than the production of the goods or provision of the services for Buyer. Upon completion of the production of the goods, the provision of the services, or the termination or cancellation of any Purchase Order, whichever occurs first, Supplier must return to Buyer all





documents (and all copies thereof) which contain all or any portion of Buyer's Confidential Information.

- b. The obligations under this paragraph will **survive** the cancellation, termination, or completion of the Purchase Order. Any unpatented knowledge or information concerning Supplier's goods, products, methods, or manufacturing processes which Supplier may disclose to Buyer incident to the manufacture of the goods or the performance of services covered by the Purchase Order will, unless specifically agreed to in writing, be deemed to have been disclosed as part of the consideration for the Purchase Order, and Supplier agrees not to assert any claim against Buyer by reason of Buyer's use or alleged use thereof; and **if the Purchase Order involves experimental research or development work paid for by Buyer, Supplier agrees to grant to Buyer an irrevocable and exclusive, royalty-free license to make, have made, use, and sell any inventions resulting from the work under the Purchase Order.**
- c. Supplier will not advertise the fact that it has contracted with Buyer for goods and services or appropriate or make use of Buyer's name or other identifying marks or property without the prior written consent of Buyer. Further, Supplier may not use any trademark, trade names, copyrights, or patents of Buyer in Supplier's advertising or promotional materials. In the event of Supplier's breach of this provision, Buyer will have the right to cancel the undelivered portion of any goods or services covered by the Purchase Order and will not be required to make any further payments except for conforming goods delivered or services rendered prior to cancellation.

25. CONFLICTS

- a. To the extent that there are conflicts between these Terms & Conditions and any accompanying Purchase Order, the conflicts shall be resolved in favor of the these Terms & Conditions without including the terms and conditions of Buyer's Purchase Order with the exception of essential terms such as identification of purchased products, price, quantity, and delivery date which shall be controlled by the Purchase Order.

26. MISCELLANEOUS

- a. Except to the extent Buyer's Purchase Order may be referred to or incorporated by reference in any separate agreement between Buyer and Supplier, the Purchase Order, any revision thereof, and these Terms & Conditions constitute the complete understanding and contract between Supplier and Buyer with respect to the subject matter hereof. No alterations or variations of the terms of this Agreement shall be valid unless made in writing, dated, and signed by both Parties. **This contract cancels and supersedes all prior and/or contemporaneous agreements and understandings not embodied herein.** This contract shall be binding and inure to the benefit of the parties and their personal representatives, successors and assigns. The parties agree that they will comply with any and all applicable laws. No provision of this Agreement may be modified, waived, amended, or changed, except by mutual agreement, in writing signed by a duly authorized representative of each of these parties.
- b. Buyer shall not be bound by any purported rescission or modification of such contract, and shall not be deemed to have waived any provision of or default under such contract, unless rescission, modification or waiver is set forth in writing signed by an authorized representative of Seller.
- c. THESE TERMS & CONDITIONS AND ANY PURCHASE ORDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, AND THE PARTIES HEREBY DISCLAIM APPLICATION THEREOF.

{R1078741.1 }





- d. No waiver of any provision of or default under such contract in any particular instance shall be deemed or construed a waiver of any other provision or default, whether similar or otherwise, in any other instance.
- e. All provisions of these Terms & Conditions providing for any act or activity or forbearance following fulfillment of the Purchase Order shall survive fulfillment of the Purchase Order until such time as the provisions have been fulfilled or satisfied or until the period of time which is included in such provisions specifically or by reference or pursuant to the applicable statute of limitations has expired.
- f. The parties are independent contractors. Supplier is an independent contractor manufacturing the purchased products for Buyer. Nothing in Buyer's Purchase Order or these Terms & Conditions or in the activities contemplated by the parties hereunder will be deemed to create an agency, partnership, employment or joint venture relationship between the parties or any of their subcontractors or representatives.
- g. Buyer may assign this agreement with the signed written consent of Supplier.
- h. If any provision of the Purchase Order and these Terms & Conditions is held invalid by any court in a final decision from which no appeal can be taken, such provision shall be deemed modified to eliminate the invalid element and as so modified, such provision shall be deemed a part of Buyer's Purchase Order and these Terms & Conditions. The invalidity of any provision of the Purchase Order and these Terms & Conditions shall not affect the force and validity of the remaining provisions.
- i. The contract between the parties shall be governed in all respects by and interpreted in accordance with the Laws of the United States and internal Laws of the Commonwealth of Pennsylvania without application of conflict of law principles.
- j. Any and all disputes between the parties shall be prosecuted solely and exclusively in the appropriate federal or state courts located in Pennsylvania, and Supplier specifically consents to personal jurisdiction of those courts and waives all defenses based on inconvenient forum.

{R1078741.1 }

