



## **EQUIPMENT PURCHASE ORDER TERMS AND CONDITIONS**

These terms and conditions (the "Equipment Terms") apply to all purchases by Gibbs Die Casting Corp. or the affiliate designated on the purchase order ("Buyer") of equipment, capital equipment, machines, machine systems and all secondary equipment, peripheral equipment, materials and other goods related thereto ("Equipment"), as well as to services incidental to the purchase of Equipment, including but not limited to delivery, set up and assembly work for the Equipment ("Services"). For the purchase of any other materials, production parts, components, service parts or other goods or services, Buyer's standard Purchase Order Terms of Purchase, located on the Gibbs Supplier Portal located at <http://www.gibbsdc.com>, will control.

### **1. Acceptance, Entire Agreement, and Modification:**

A. Each purchase order or purchase order revision issued by Buyer for Equipment, Services or Equipment and Services ("Equipment Order" or "Order") is an offer to the seller identified on the Equipment Order (the "Seller") and includes and is governed by these Equipment Terms. The Equipment Order does not constitute an acceptance of any offer or proposal made by Seller. Any offer or proposal made by Seller is specifically rejected.

B. Acceptance of this Equipment Order shall be strictly limited to the terms of the Equipment Order and these Equipment Terms. Seller accepts the Equipment Order, including these Equipment Terms, by (i) accepting the Equipment Order in writing, (ii) commencing any work or performance under the Equipment Order, or (iii) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Equipment Order. Buyer rejects any additional or inconsistent terms and conditions offered by Seller at any time and irrespective of Buyer's acceptance of or payment for Seller's Goods or services.

C. The Equipment Order, together with these Equipment Terms, and the attachments, exhibits, specifications and supplements specifically referred to in the Equipment Order, are intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior agreements, written or oral. In addition, all other purchasing manuals, guidelines and requirements available and updated from time to time through authorized links provided on the Buyer's web site are incorporated by reference. No course of prior dealings between the parties and no usage of the trade may be used by Seller to supplement or explain any term used in the Equipment Order. Any terms or conditions included on any quotation, invoice, acknowledgement or otherwise are expressly not incorporated into the Equipment Order and will have no force or affect whatsoever.

D. Except with respect to changes as set forth in paragraph 8 and shipping and delivery instructions as set forth in paragraph 10, any modification of these Equipment Terms must be expressly stated in the Equipment Order or in a writing signed by an authorized officer of Buyer expressly referring to the Equipment Order and evincing an intent to modify the terms of the Equipment Order. No oral modification or modification by email correspondence will be binding on Buyer.



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**2. Invoices:** All invoices and/or advance shipping notices for Equipment shipped and/or Services provided pursuant to this Equipment Order must reference the order number, Buyer's part number, quantity of pieces in the shipment, number of cartons or containers, Seller's name and number and bill of lading number, before any payment will be made by Buyer for the Equipment or Services. Buyer reserves the right to return all invoices or related documents submitted incorrectly, and payment terms will be determined as of the date of the last correct invoice or advanced shipping notice received. Where Equipment or Services are not supplied in accordance with the Equipment Order, Buyer shall be entitled to withhold payment until Seller has fulfilled its obligations in full, including payment for any damages caused by the delay.

### 3. Prices, Taxes:

A. Prices and payment terms are set forth on the Equipment Order.

B. Seller warrants that the prices in the Equipment Order are fixed and complete, and no additional charges of any type shall be added without Buyer's express written consent, including but not limited to, material surcharges, shipping, packaging, labeling, custom duties, federal, state and local taxes, storage, handling, insurance, boxing and crating. By accepting the Equipment Order, Seller accepts the risk of any increase in costs and any other eventuality that may result in a loss to Seller. Seller may not under any circumstances increase the Equipment Order price or refuse to perform or deliver based on increased costs, loss of anticipated profits, inaccurate or erroneous data used in Seller's quotations, unrealized assumptions, unforeseen circumstances, regulations, industry changes, or any other reason except as expressly set forth in the Order, these Equipment Terms, or Buyer's express written authorization.

C. In addition to any right of setoff or recoupment provided or allowed by law, all amounts due Seller, or any of its subsidiaries or affiliates shall be considered net of indebtedness or obligations of Seller, or any of its subsidiaries or affiliates to Buyer, and Buyer may setoff against or recoup from any amounts due or to become due from Seller, or any of its subsidiaries or affiliates to Buyer however and whenever arising. In the event that Buyer reasonably feels itself at risk, Buyer may withhold and recoup a corresponding amount due Seller or any of its subsidiaries or affiliates to protect against such risk.

### 4. Buyer's Property:

A. The right, title and interest to all items furnished by Buyer or its customers to Seller for use in Seller's performance of the Equipment Order, or for which Buyer or its customers have reimbursed Seller or have agreed to reimburse Seller including, but not limited to, all supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, designs, drawings, specifications, spare parts, trial parts, ancillary products, and other items owned by Buyer ("Buyer's Property") shall at all times be and remain the property of Buyer or its customers. Seller shall bear the risk of loss of and damage to Buyer's Property. Seller will: (i) properly house and maintain the Buyer's Property on Seller's premises; (ii) not use the Buyer's Property for any purpose other than for performance under the Equipment Order; (iii) prominently mark the Buyer's Property as property of Buyer; (iv) refrain from commingling the Buyer's Property with the property of Seller or with that of a third party; (v) adequately insure the Buyer's Property against loss or damage, including but not limited



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to maintaining full fire and extended coverage insurance for replacement value and naming Buyer as the loss payee and an additional insured; (vi) ensure that the Buyer's Property does not become subject to any liens or other claims; and (vii) not move the Buyer's Property to another location whether owned by Seller or a third party, without the prior written consent of Buyer. Buyer will have the right to enter Seller's premises at reasonable times to inspect the Buyer's Property and Seller's records pertaining thereto.

B. Seller expressly waives and releases, and agrees not to file or otherwise assert, prosecute, or suffer to permit any statutory, equitable or other liens, including but not limited to any molder liens, moldbuilder liens, special tool liens, artisan's liens, warehouseman's liens, and the like, that Seller has or might have on or in connection with the Buyer's Property. Seller specifically waives any and all liens for work performed, including but not limited to, designing, manufacturing, improving, maintaining, servicing, using, assembling, fabricating or developing the Buyer's Property and Goods, and for amounts owed or that may become owing by Buyer. Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all actual attorneys' fees, costs of litigation, settlement costs, and all other costs and expenses that are in any way related to releasing, terminating or otherwise removing any lien placed on the Buyer's Property.

C. Without limiting Buyer's remedies, at Buyer's demand, Seller will assign to Buyer any claims Seller has against third parties with respect to Buyer's Property.

D. Seller is a bailee at will with respect to Buyer's Property, and Buyer has an absolute right to take possession of Buyer's Property at any time. Upon written request, Seller shall immediately deliver the Buyer's Property at Buyer's option F.O.B. Seller's facility (Ex Works Loaded), according to Incoterms 2000 if applicable, and properly packed and marked in accordance with the requirements of the carrier and Buyer. Seller will cooperate with Buyer's removal of the Buyer's Property from Seller's premises, and shall remain responsible for any damage to Buyer's Property until Buyer takes possession or accepts delivery.

E. Unless otherwise agreed to in writing by Buyer, Seller at its own expense shall maintain, repair and refurbish Buyer's property in first class condition including repair necessitated by wear and tear and other usage by Seller. All replacement parts, additions, improvements, accessories, secondary equipment and materials for Buyer's Property shall become Buyer's Property upon their incorporation into or attachment to Buyer's Property. Seller will pay all personal property taxes for Buyer's Property in Seller's possession or under its control.

F. Buyer has not made and does not make any representations, guarantees, or warranties of any Buyer's Property or any designs, drawings, data, supplies or material furnished by it. Buyer expressly disclaims any warranty or representation whatsoever either express or implied, as to the fitness, condition, merchantability, design or operation of Buyer's Property or its fitness for any particular purpose. Seller assumes sole responsibility for inspecting, testing and approving all Buyer's Property, and for verifying function,



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accuracy, precision, availability and suitability of Buyer's Property and other materials supplied by Buyer prior to any use by Seller.

G. Buyer will not be liable for and Seller shall assume all risk of death or injury to persons or damage to property arising from use of, maintenance, repair, assembly, disassembly, testing, shipping or storage of the Buyer's Property or other materials supplied by Buyer. Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations and proceedings, including without limitation all actual attorneys' fees, costs of litigation, settlement costs, and all other costs and expenses relating to Seller's use of, maintenance, repair, assembly, disassembly, testing, shipping or storage of Buyer's Property. Seller agrees that it will comply with obligations in these Equipment Terms to release Buyer's Property notwithstanding any offsetting claim that it may have against Buyer.

**5. Material and Traceability:** If requested by Buyer, Seller will provide material certifications, statistical process control data, all required test data as specified on the prints or other technical standards, math data, drawings, designs and any other information relating to the Equipment. Seller shall also maintain tracking procedures in such manner that each item to purchased pursuant to this Equipment Order shall be traceable through the manufacturing process, delivery and assembly process, and with respect to materials used by Seller to produce the Equipment.

**6. Drawings and Data:** All drawings, data, designs, engineering instructions, models, specifications or other technical information, written, oral or otherwise, supplied by or on behalf of Buyer specifically in connection with performance of this Equipment Order and all information obtained therefrom or as a result thereof shall be and remain the property of Buyer. Unless otherwise specified by Buyer, all such information is confidential and Seller agrees to protect the confidentiality of the information as set forth in paragraph 25, below.

### **7. Maintenance, Training and Spare Parts:**

A. Seller will provide Buyer with a complete and comprehensive preventative maintenance plan for Equipment prior to final acceptance by Buyer. The preventative maintenance plan shall include, without limitation, at least two (2) complete sets of English language maintenance and operating manuals for all Equipment purchased by Buyer. Seller will provide to Buyer upon request a complete copy of (i) the source codes for any software incorporated in the Supplies purchased by Buyer from Seller along with any additional information reasonably necessary so that a trained programmer of general proficiency may maintain and support any such software and (ii) a running object code version of such software.

B. Seller will provide any and all necessary training and training materials to Buyer for the Equipment at the initial stage of installation, at no additional cost to Buyer, at Buyer's designated location The training will be in the amount and on such schedule as may be reasonably required by Buyer.

C. Seller will provide spare parts for all Equipment for a period of not less than 15 years after acceptance by Buyer. Seller agrees that it will offer the spare parts to Buyer in an amount not more than the lowest price for which Seller provides similar parts to other



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customers. In any event, Seller shall not charge more than its actual cost plus a ten percent margin.

**8. Changes:** During performance of this Equipment Order, Seller shall not make any changes in the design of Equipment or performance of Services to be furnished by Seller under this Equipment Order, terminate or modify this Equipment Order or obtain an adjustment in price for any reason without advance notification to and written approval by Buyer. Buyer may, by written order, at any time make changes in any one or more of the following: (i) drawings, designs or specifications for the Goods, (ii) method of shipment or packing; (iii) place or time of inspection, delivery or acceptance; and (iv) the amount of any Buyer furnished property. Any such changes shall be deemed not to affect the time for performance and price under the Equipment Order unless Seller provides Buyer with written notice of a claim for adjustment to time for performance or cost within ten (10) days after Buyer's notice to Seller of the change. Seller shall provide Buyer with such additional information including invoices and agreements as Buyer may reasonably request in order to permit Buyer to evaluate Seller's claim for adjustment. After auditing such claim, Buyer may, in its discretion, determine that an adjustment (up or down) is appropriate. Seller will be entitled to reimbursement for only for proveable actual costs incurred by Seller as a direct result of the change, and will not be entitled to any reimbursement for overhead costs, financing expenses, lost business or any non-direct cost or expense. Nothing in this clause shall excuse Seller from proceeding with performance of this Equipment Order as changed. In the event that any materials used by Seller in making the Goods become unavailable, Seller shall locate a source for, and propose to Buyer, alternative materials for use in making the Goods. Buyer shall, in its sole discretion, determine whether the use of such alternative materials is acceptable.

**9. Stop Work Orders:** Buyer may at any time, by a written notice to Seller, stop all or part of the work under this Equipment Order until further written notice from the Buyer at any time during the work stoppage. Buyer may with respect to all or any part of the work covered by the Stop Work Order, either cancel the Stop Work Order or terminate this Equipment Order in accordance with the termination provisions in these Equipment Terms. If a Stop Work Order has a material effect on cost or delivery, Seller may submit to Buyer a claim for equitable adjustment, and Buyer, after reviewing Seller's claim, may make an equitable adjustment in the price or the delivery schedule or both in Buyer's sole discretion. It shall be the responsibility of the Seller to submit a written claim for equitable adjustment to Buyer in writing within twenty (20) days after the Stop Work Order. The claim may include only proveable actual costs incurred by Seller as a direct result of the

### **10. Deliveries and Shipments:**

A. Seller shall make deliveries under this Equipment Order in accordance with the Equipment Order. Unless otherwise stated in the Equipment Order, Seller agrees to deliver and install the Equipment so that the Equipment is fully functional at the location designated by Buyer, including delivery and installation of all parts, components, materials and other goods necessary for proper operation of the Equipment, whether or not such parts, components, materials and other goods are listed in the Order. All such incidental goods are included in the term "Equipment" for the purposes of these Equipment Terms. If installation is excluded in the Order, Seller agrees to deliver the Equipment and all incidental goods to the location specified in the Order in fully functional form and ready to operate.



B. If delivery of the Equipment or performance of Services is likely to be delayed, Seller must immediately notify Buyer in advance, provided that such notice does not release Seller from its liabilities for all costs, losses and consequential damages resulting from incomplete or delayed delivery or performance, without prejudice to Buyer's other available rights and remedies. Furthermore, Seller acknowledges and agrees that money damages would not be a sufficient remedy for any actual, anticipatory or threatened breach of this Equipment Order by Seller with respect to its delivery of Equipment or performance of Services, and that, in addition to all other rights and remedies which Buyer may have at law, equity or under these Equipment Terms, Buyer is entitled to specific performance and temporary, preliminary and permanent injunctive or other equitable relief as a remedy for any breach, without proof of actual damages and without bond or other security being required. Buyer may reject any delivery that fails to comply with the Equipment Order and all specifications provided by Buyer. Equipment shipped in advance of Buyer's delivery schedule may be returned at Seller's expense.

C. Seller is responsible for (i) determining and meeting all requirements for delivery and installation, including the physical characteristics and limitations of Buyer's designated location for the Equipment, (ii) completing all connections required for the Equipment (as an example only, if the Equipment requires water, Seller is responsible for connecting the Equipment to the water supply at Buyer's designated location), (iii) providing any and all equipment, tools, scaffolding, devices and any other goods or materials necessary to properly install the Equipment at Buyer's designated location, and (iv) complying with all regulations for Buyer's designated location. Seller is responsible for verifying the sufficiency and adequacy of all information provided by Buyer. If Buyer agrees to provide any equipment or other goods to facilitate delivery or installation, Seller will return such equipment or goods to Buyer in the same condition in which it was received, and is liable for any loss or damage.

D. Seller's installation shall not interfere with Buyer's operations. Seller must comply with all Buyer's specifications and requirements for shipping, delivery and packaging. Seller is responsible for consulting with Buyer regarding the timing and performance of all delivery and installation activities and will comply with all directions provided by Buyer's authorized personnel.

E. The delivery date set forth in the Order (or such other date agreed to in writing by Buyer) is a firm date for the complete delivery and installation of the Equipment in final and fully functional form. Time is of the essence. Buyer may revise or amend the delivery and installation instructions at any time, and Seller may make a claim for a change adjustment under paragraph 8, above. In the event that delivery is late, Seller must ship at its expense all late shipments by express or other priority methods of delivery as may be specified by Buyer. Seller shall be responsible for costs and damages incurred by Buyer, directly or indirectly, including, but not limited to, production line shutdowns of the Buyer or Buyer's customers as result of or caused by actual or threatened late delivery and all costs and expenses to expedite delivery and mitigate damages due to actual or threatened late delivery.



F. The indemnity provisions of paragraph 22 apply to all delivery and installation of the Equipment. Without limiting that paragraph, Seller is liable for, and must indemnify Buyer against, any and all losses, damages, claims, actions, costs and expenses resulting from delivery or installation of the Equipment, including, but not limited to, (i) any personal injury, (ii) damage to Buyer's property, (iii) interference with Buyer's operations, and (iv) any failure to timely deliver and fully install the Equipment.

**11. Customs and Origin:** For customs purposes, Seller shall prepare and expedite any and all required forms and submit them to Buyer within fourteen (14) days of Seller's receipt of the forms. Seller shall attach to the shipping documents a commercial invoice in duplicate. Should additional documents be required in the case of imports or exports in order to provide proof of the intended use of the Equipment delivered, Seller shall procure all such documents for Buyer without delay and make them available to Buyer at Seller's cost. Seller is bound by and warrants the accuracy of all invoices, documents, and information furnished to Buyer by Seller or its agent for export, entry, or other purposes.

**12. Electronic Data Interchange:** Seller will, at Buyer's request, connect to Buyer's electronic data interchange ("EDI") system and will comply with Buyer's guidelines and policies with respect to the EDI system

**13. Risk of Loss, Acceptance or Rejection, and Quality Control:**

A. The title to and risk of loss or damage to the Equipment will pass from Seller to Buyer at the time of final installation, or, if Seller is not installing the Equipment, at the time of final delivery of the Equipment to Buyer.

B. Buyer does not accept the Equipment until the Equipment has been fully tested and Seller has demonstrated that the Equipment meets all required specifications. Buyer may reject any Equipment that is defective, damaged or non-conforming or in breach of Seller's warranties. Payment to Seller shall not be construed as acceptance by Buyer or agreement by Buyer that the Goods conform to these Equipment Terms. Any Acceptance of the Equipment or any inspection or testing by Buyer does not limit the continuing validity and enforceability of all Seller's warranties or relieve Seller of its obligations under these Equipment Terms. Seller may revoke acceptance if Buyer subsequently determines that the Equipment was non-conforming or Buyer accepted the Equipment with the expectation that any non-conformity would be cured, and Seller fails to timely cure. In the event of Buyer's rejection of any Goods or revocation of acceptance, for whatever reason, risk of loss or damage will be treated as never having passed to Buyer and has having rested with Seller. Defective or nonconforming Goods may be returned to Seller for full credit and at Seller's risk and expense, including transportation charges both ways.

C. At reasonable times during the period of Seller's performance hereunder, including the period of manufacture, Buyer and its customers may inspect and/or test the Equipment to be furnished under the Equipment Order at the plants where the work is being performed or the Equipment is being produced and designed, including those of the Seller's suppliers, and Seller will provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and testing. Inspection shall not obviate any warranty,



constitute acceptance of the Goods, or otherwise relieve Seller of its obligations under these Equipment Terms.

D. Seller shall provide and maintain quality control and inspection systems acceptable to Buyer. Seller shall comply with the provisions of Buyer's supplier quality manual (SQM), as revised or amended from time to time, which is hereby incorporated into this Equipment Order for all purposes. The Supplier Quality Manual (Document QS1382) is located on the Gibbs Supplier Portal located at <http://www.gibbsdc.com>. Seller acknowledges receipt, review and acceptance of the SQM. Buyer may, at its discretion, revise or amend the SQM at any time, and Seller agrees that any such revised or amended SQM, as posted on the Gibbs Website or otherwise made available to Seller, will be binding on Seller for purposes of this Equipment Order.

Commented [RH1]: Does this apply to Equipment?

**14. Notice of Labor Disputes:** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Equipment Order, Seller shall immediately give written notice thereof, including all relevant information with respect thereto, to Buyer. Seller agrees to insert the substance of this paragraph, including this sentence, in all purchase order or subcontract issued by Seller to Seller's suppliers. Seller further agrees to notify Buyer in writing at least sixty (60) days prior to the expiration of any collective bargaining agreement to which Seller or any of Seller's suppliers are party.

**15. Warranties:**

A. Seller warrants and represents that all Equipment and Services furnished hereunder are (a) in strict compliance with the specifications, samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Buyer; (b) merchantable and of good material and workmanship and free from all defects including but not limited to design, workmanship and materials; (c) selected, designed, manufactured, assembled and (if applicable) installed by Seller based on Buyer's intended use and will be fit and sufficient for the use and purpose intended by Buyer; (d) in strict compliance with all applicable industry standards, quality control and inspection standards including QS9000, TS6949, Seller's Quality Manual and all similar quality system standards, and, as of the date of final delivery or installation, all statutes, rules and regulations of any kind or nature, including those promulgated by any government or governmental agency in the United States and in countries in which Buyer has informed Seller the Equipment is likely to be used; (e) free from all liens and encumbrances; and (f) free from all patent, trademark, copyright, trade secret or other intellectual property right infringement or claims.

B. Unless as set forth in subparagraph C, below, or as otherwise agreed in writing, all warranties for Equipment shall continue for five years after acceptance by Buyer, and all warranties for Services shall continue for two years after the date the Services are performed. Approval by Buyer of Seller's design, drawings, specifications, samples, etc. does not waive or limit any warranty. Seller shall reimburse Buyer for all costs (including labor charges, cost of replacement parts, dealer handling charges and any other expenses) incurred by Buyer as a result of Seller's breach of any warranty. There are no exclusions, limitations, or disclaimers of warranties other than those that may be expressly recited in these Equipment Terms. Notice of breach of warranty shall be deemed sufficient if given by Buyer within one hundred eighty (180) days after discovery by Buyer. Such notice may be given orally or in writing.



C. For all Equipment intended for use in the process of manufacturing or modifying parts by Buyer for delivery to Buyer's customer(s) including all tools, dies and molds ("Production Equipment") in addition to all other warranties and representations in the Equipment Order and these Equipment Terms, Seller warrants that the Production Equipment complies with all specifications and requirements of Buyer's customer and that the parts manufactured or modified by use of the Production Equipment will meet all specifications and requirements of Buyer's customer. Buyer will provide Seller with the customer's requirements and specifications, but Seller is responsible for verifying the sufficiency and adequacy of all information provided by Buyer, and for notifying Buyer if additional information is required. All warranties for Production Equipment will continue until the later of (a) the period set forth in subparagraph B, above, (b) the expiration of all warranties made by Buyer to its customer concerning Buyer's goods ("Goods") manufactured or modified by use of the Production Equipment; or (c) the expiration of the longest time period which Buyer's customer may be required, by contract or law, to repair or replace the Goods or Buyer's product incorporating the Goods, if the Goods are defective or nonconforming to any warranties. The statute of limitations period applicable to any breach of warranty will be the longest statute of limitation period for breach of contract, products liability or indemnity claims in any jurisdiction of the United States or, in the case of any recall campaign, the longest time period dictated by the U.S. federal, state, or foreign government where the Goods are used.

**16. Defective or Nonconforming Goods, Breach of Warranty, Remedies:**

A. In the event of a defect on delivery or breach of a warranty, Buyer may elect one or more of the following: (i) notify Seller of the defect or breach of warranty and require Seller to promptly cure the defect or breach of warranty, (ii) cure the defect or breach of warranty in which event Seller is liable for all actual costs and expenses incurred by Buyer, plus reasonable compensation of the time expended by Buyer's personnel, (iii) retain a third party to cure the defect or breach of warranty in which event Seller is liable for all charges and expenses charged by the third party to Buyer, (iv) return the Equipment at Seller's risk and expense, and recover from Seller the price paid, and/or (v) accept or retain the Equipment or Services and equitably reduce the price based on value lost and damages incurred due to the defect or breach of warranty.

B. Seller will replace the Equipment free of charge or be liable for the cost of such replacement if (i) the defect or breach of warranty is not capable of repair, (ii) Seller attempted to repair the Equipment and the repair was rejected by Buyer, or (iii) Buyer, in its sole discretion, determines that the cost of repair is likely to exceed the cost of replacement. These Equipment Terms (including all warranties) apply to any repair or replacement provided by Seller. and is without prejudice to all Buyer's rights, including, without limitation, indemnity rights, the right to reimbursement for.

C. Seller shall further be liable to Buyer for injunctive relief, lost profits, and all special, incidental, or consequential damages, whether losses or damages are caused directly or indirectly as a result of the Seller's breach of warranty, delivery of defective or nonconforming Goods, failure to perform Services as required under the Equipment Order and these Equipment Terms, or any other breach of the Equipment Order including these Equipment Terms and all other documents, manuals, and specifications referenced and incorporated in the Equipment Order and these Equipment Terms. Exercise by Buyer of its rights under this paragraph 16 is not an election of remedies. All remedies are cumulative



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of all rights of Buyer under the Equipment Order, these Equipment Terms, any other agreement with Seller, and applicable law.

**17. Grounds for Insecurity; Adequate Assurance of Performance:** When, in Buyer's good faith opinion, reasonable grounds for insecurity arise with respect to Seller's performance, Buyer may demand from Seller adequate assurance of future performance. If Buyer requests assurance of performance from Seller and Seller fails to provide assurances that Buyer, in its discretion, deems adequate, Buyer may, at its option, treat any and all Equipment Orders as repudiated by Seller. In the event of repudiation, Buyer will have all rights and remedies provided under paragraph 16 of these Equipment Terms, in addition to all rights and remedies provided in the Equipment Order, these Equipment Terms, any other agreement with Seller, and at law. Without limitation, any breach by Seller under this Equipment Order or any other contract or agreement between Buyer and Seller (or any of their respective affiliates), or any breach of warranty by Seller constitutes reasonable grounds for Buyer's insecurity.

### 18. Termination:

A. In addition to any other rights of Buyer to cancel or terminate this Equipment Order, Buyer may at its option immediately terminate all or any part of this Equipment Order for Buyer's convenience, at any time and for any or no reason by giving written notice to Seller. Upon receipt of notice of termination, Seller unless otherwise directed by Buyer shall: (i) terminate promptly all work under this Equipment Order; (ii) transfer title and delivery to Buyer of the finished work, the work-in-progress, and all parts and materials which Seller procured or acquired in accordance with this Equipment Order (iii) settle claims by subcontractors, if any, only for actual costs that are rendered unrecoverable by the termination; and (iv) take actions reasonably necessary to protect Buyer's Property in Seller's possession or Seller's supplier's possession.

B. Upon termination for convenience and subject to paragraph 19, Buyer is obligated to pay Seller only the following amounts without duplication: (i) the Equipment Order price for Equipment or Services which have been completed in accordance with Buyer's specifications and meet all warranties stated herein; (ii) Seller's reasonable actual costs of the work-in-progress and parts and material furnished to Buyer in accordance with the provisions of this paragraph; (iii) Seller's reasonable actual payments in settlement with its suppliers provided Seller obtains Buyer's prior written approval of such amount; (iv) Seller's reasonable actual costs for protecting Buyer's Property. Buyer will not be liable to pay for any undelivered goods, materials or products which are Seller's standard stock or which are readily marketable, or for any Equipment, goods, materials or product which is not promptly delivered to Buyer after request by Buyer. Buyer will not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller or Seller's subcontractors for loss of anticipated profit, unabsorbed overhead, interest on claims, financing costs, product development and engineering costs, facilities and equipment, rearrangement cost or rental, unamortized depreciation costs, or general and administrative burden charges arising from termination of this Equipment Order. To make a claim under this paragraph, Seller must submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit within twenty-one (21) days from the effective date of termination, and must thereafter promptly furnish all supplemental and supporting information that Buyer requests. Buyer or its agent shall have



the right to audit and examine all books, records, facilities, work material, inventories Equipment (completed or in process) and other materials and information relating to any termination claim of Seller. Payment under this paragraph shall constitute the only liability of Buyer if this Equipment Order is terminated by Buyer for its convenience. Failure by Seller to timely submit a termination claim under this paragraph constitutes an irrevocable waiver and release by Seller of any and all costs, expenses, claims, damages, charges, and losses incurred by Seller under the Equipment Order and termination. In no event shall Buyer be liable in any amount greater than the price stated in the Equipment Order.

C. Termination of this Equipment Order does not affect Seller's obligations under (i) this Equipment Order as to Equipment, Services or any other goods or services delivered or performed before termination, (ii) any completed Equipment delivered after termination under the provisions of this paragraph, and (iii) under any other agreement not dependent upon completion of the Equipment Order.

D. Buyer may terminate this Equipment Order in whole or in part for default if: (i) Seller fails to perform in accordance with any of the requirements of this Equipment Order or to make progress so as to endanger performance under this Equipment Order; (ii) Seller breaches or defaults under any other agreement between Buyer and Seller; (iii) Seller breaches any warranty to Buyer under this Equipment Order or any other agreement, and fails to promptly cure on demand; or (iv) Seller becomes insolvent, suspends its operations, or if any petition is filed or proceeding commenced by or against Seller under any State or Federal law related to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any termination for default will be without liability to Seller except for completed Equipment delivered and accepted by Buyer and completed Services, payment for which can be setoff against any damages due to Buyer. Buyer, at its option, may require Seller to transfer title and deliver to Buyer any and all Equipment produced or property procured by Seller for performance of the work terminated and, if promptly delivered, Seller will be credited with the reasonable value thereof not to exceed Seller's cost. Seller will be liable for damages caused by or resulting from its default including but not limited to Buyer's cost of procurement replacement Equipment and Services. Buyer shall, in addition, have all other rights arising from Seller's default provided under these Equipment Terms, including paragraph 16(C), and at law and equity. If after a default termination, it is determined that Seller was not in default, the termination shall be considered to have been made for convenience pursuant to the preceding paragraph under this provision.

E. Because Buyer's commitments to its customers are made in reliance on Seller's commitments under this Equipment Order, Seller has no right to terminate this Equipment Order. By accepting this Equipment Order, Seller accepts all risks of performance. Seller acknowledges that any attempt by Seller to terminate or repudiate this Equipment Order would cause irreparable harm to Buyer and agrees that Buyer is entitled to specific performance of Seller's obligations under this Equipment Order without placing a bond or offering any proof of damages or harm.

F. Upon the expiration or earlier termination of this Equipment Order for whatever reason, Seller agrees to take such action as may be reasonably required by Buyer to accomplish the transition from Seller to an alternative seller, including, without limitation the actions



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set forth below. The term “alternative seller” expressly includes, but is not limited to, a Buyer-owned or operated facility. Among other things:

- i. Seller will provide all notices necessary or desirable for Buyer to resource the Equipment Order to an alternative seller.
- ii. Seller will return to Buyer, the alternative seller or any other designee of Buyer (a) all Buyer’s Property and any other property furnished by or belonging to Buyer or any of Buyer’s Customers in as good a condition as when received by Seller, reasonable wear and tear excepted; (b) drawings, specifications, data, and other information provided by Buyer to Seller or produced by Seller in connection with its performance under the Equipment Order; and (c) all Equipment, materials, and other goods required to be delivered to Buyer under this paragraph.
- iii. Seller shall, at Buyer’s option, for the benefit of Buyer, the alternative seller or any other designee of Buyer: (i) assign any or all supply contracts or orders for raw material or components relating to the Equipment Order; (ii) sell, at Seller’s cost, any or all inventory and work in process relating to the Equipment Order and (iii) sell, at the unamortized portion of the cost of such items, less any amounts Buyer previously has paid to Seller for the cost of such items, any or all seller’s property relating to the Equipment Order.

### 19. Limitation of Seller’s Remedies, Damages:

A. In no event shall Buyer be liable to Seller for anticipated profits or for special, incidental or consequential damages. This limitation of liability provision applies notwithstanding the type of this Equipment Order. Buyer’s liability for termination is limited to claims made under paragraph 18, above. Any other claim of any kind or for any loss or damage arising out of or in connection with or resulting from each Equipment Order, or any other agreement between Buyer and Seller is the Reasonable Obsolescence, if any, created by the event giving rise to the claim. Buyer and Seller agree that “Reasonable Obsolescence” means the following amounts without duplication: (i) the Equipment Order price for all finished and completed Equipment that conform to the requirements of this Equipment Order and the warranties stated herein, and have not been previously paid for; and (ii) Seller’s reasonable actual cost of the usable and merchantable work in process and raw materials/components transferred to Buyer in accordance with the termination. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller’s subcontractors, for any other alleged losses or costs, whether denominated as loss of anticipated profit, recoupment of investment, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges resulting from termination of this Equipment Order or otherwise. Notwithstanding anything to the contrary, Buyer’s liability for any termination of default of this Equipment Order shall not exceed the price stated in the Equipment Order.

B. Seller’s obligations under this Equipment Order are independent of Buyer’s obligations. Seller’s sole remedy for any breach or default by Buyer is the commencement of an action against Buyer for damages limited as set forth above. Except as specifically permitted under these Equipment Terms or in writing by Buyer, Seller may not under any circumstances stop work or suspend



performance under the Equipment Order, cancel or terminate the Equipment Order, delay shipments, or take any other action that could interfere with production of product by Buyer or the operation of any of Buyer's facilities.

**20. Force Majeure:** In the event of fire, accidents, government acts, war, acts of terrorism, riots, or other extraordinary event beyond either party's reasonable control which prevent manufacture, transportation, delivery, acceptance or Buyer's prompt utilization of the Equipment or Services covered by this Equipment Order, the affected party may, without any liability or penalty, delay delivery, manufacture, transportation, acceptance, or utilization by written notice effective when received by the other party, until such event and consequences of such event of force majeure shall have terminated or reduced to an extent that performance under the Equipment Order is possible, or the affected party is able to perform despite the event of force majeure. Said notice of an event of force majeure shall contain the reason for any delay which the notifying party considers to be an event under the provisions of this paragraph. An event of force majeure shall not include events within the total or partial control of the party giving notice including, but not limited to, poor business judgment or estimates, material cost increases, currency fluctuations, labor shortages, or unanticipated engineering or technical difficulties, or Seller's financial condition, insolvency, or lack of access to capital. Furthermore, Seller specifically agrees that labor disputes, labor disruptions, and strikes at its facility or by its workforce do not constitute a force majeure. Notwithstanding the foregoing, in the event that any such force majeure shall cause Seller to fail to deliver or otherwise perform under this Equipment Order for a period of thirty (30) days, Buyer may terminate the Equipment Order immediately and find an alternative source for the Goods to be provided hereunder, all without liability or obligation to Seller. Nothing in this paragraph limits Buyer's right to terminate for convenience at any time.

**21. Patent, Trademark, Copyright, and Intellectual Property, Indemnification:**

A. Seller grants to Buyer a worldwide, nonexclusive, royalty-free, irrevocable, and fully assignable license to use, repair and have repaired, to reconstruct and have reconstructed, to make or have made the Equipment ordered hereunder. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights, patents, trade secrets, industrial design rights, drawings, data, designs, engineering instructions, models, specifications or other technical information, written, oral or otherwise, in the Equipment and any related goods and information prepared for Buyer in connection with this Equipment Order. Technical information and data furnished to Buyer in connection with this Equipment Order are disclosed on a non-confidential basis. To the extent that, by operation of law, Seller owns any intellectual property rights in the Equipment or related to the Equipment, Seller hereby assigns to Buyer all rights, title and interest, including trademark, copyright, patent, and trade secret rights in the Equipment and all related goods and information. Seller is required to ensure that any subcontractors and suppliers to Seller have contracts with Seller in writing consistent with the terms of this paragraph.

B. Seller further agrees to defend, hold harmless and indemnify Buyer, its successors, assigns, employees and agents, against all claims, demands, losses, suits, damages, liability and expenses (including actual attorneys' fees) arising from any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, industrial design right, or any other intellectual property right by reason of (i) the manufacture, use, repair or sale of the



Equipment, including infringement arising out of compliance with specifications furnished by Buyer (ii) breach by Seller of this paragraph, or (iii) for actual or alleged misuse or misappropriation of a trade secret or intellectual property right resulting directly or indirectly from Seller's actions. Seller further agrees to waive any claim against Buyer, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for patent, trademark, copyright or industrial design right infringement or the like, including claims arising out of compliance with specifications furnished by Buyer. Upon becoming aware of such a claim, demand, suit or action, Buyer shall notify Seller and Seller, at Buyer's option, and at Seller's expense, will undertake defense of such a claim, demand, suit or action through counsel approved by Buyer. Seller shall obtain written authorization from Buyer before settlement is made of the claim, demand, suit or action, unless the settlement results in a full and irrevocable release of all rights, claims, demands, suits or actions against Buyer without any payment, admission, or representation by Buyer. In the alternative, Buyer may elect to undertake defense of such a claim, demand, suit or action, to the extent it is asserted against Buyer, and Seller must reimburse Buyer on a monthly basis for all expenses, actual attorney fees, and other costs incurred by Buyer.

## **22. Indemnification and Insurance:**

A. In addition to all indemnification obligations in the Equipment Order, these Equipment Terms and any other agreement between Buyer and Seller, Seller shall indemnify and hold harmless Buyer, its employees, agents, customers, and invitees from and against all liability, demands, claims, losses, costs, damage and expenses including actual attorney fees (collectively, "Claims") by reason of or on account of property damages, personal injury, death or any other Claims arising out of, as result of, or in connection with the Equipment, Services, installation of the Equipment, or any other performance under this Equipment Order, including Claims which are caused or occasioned by any defect in product and/or breach of this Equipment Order or warranties, and Claims caused, directly or indirectly, by any acts of Seller, its employees, agents and invitees. The Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. Upon becoming aware of a Claim, Buyer shall notify Seller and Seller, at Buyer's option, and at Seller's expense, will undertake defense of the Claim through counsel approved by Buyer. Seller shall obtain written authorization from Buyer before settlement is made of the Claim, unless the terms of the settlement could not under any circumstances materially adversely affect Buyer, including the absence of any admission or representation of the existence of a defect in the Equipment or a failure of Buyer to fully and faithfully perform its obligations. In the alternative, Buyer may elect to undertake defense of such a Claim to the extent it is asserted against Buyer, and Seller must reimburse Buyer on monthly basis for all expenses, actual attorney fees, and other costs incurred by Buyer.

B. Seller agrees to procure and maintain, at its sole expense, insurance with reputable insurance companies, sufficient to compensate Buyer for any failure of Seller to perform any of its obligations under this Equipment Order and to cover Seller's liabilities, including all contingent liabilities, to Buyer and third parties. Buyer is entitled to require specific insurance coverage, including products liability, employer's liability, workman's compensation, general liability, public liability, property damage liability, completed operations liability, recall liability, business interruption, and contractual liability, in the



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amounts and on terms acceptable and approved by Buyer. Seller is required to procure all required insurance with Buyer as a named loss payee and additional insured. Seller must provide to Buyer proof of such insurance upon Buyer's request. Such policies shall provide for cancellation only upon advance written notice to Buyer. Failure by Buyer to request proof of insurance from Seller shall not constitute a waiver of the requirements in this paragraph.

### 23. Compliance with Laws:

A. Seller agrees to comply with all applicable federal, state and local laws, executive orders, rules and regulations during the performance of this Equipment Order. Seller warrants that: (i) all Equipment sold or furnished under this Equipment Order will conform to and comply with OSHA standards and regulations and all applicable Federal Motor Vehicle Safety Standards issued under the NTMVSA; (ii) the Equipment has been manufactured or furnished in accordance with the FLSA and regulations issued thereunder; and (iii) for each chemical product or product containing a chemical substance, purchased under this Equipment Order, Seller will furnish Buyer a Material Safety Data Sheet ("MSDS") in conformance with OSHA state and local requirements, unless current MSDS has previously been submitted by Seller to Buyer. Seller further warrants that all chemical substances delivered under this Equipment Order will conform to and comply with the TSCA and regulations issued thereunder. Seller agrees to indemnify and hold Buyer and its customers harmless for any loss, damage or expenses sustained because of Seller's non-compliance with any applicable law.

B. Seller agrees, where applicable, to: (i) comply with the North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act; (ii) warrant compliance with the United States Anti-Dumping Law; and (iii) upon request, promptly furnish certificates of local value added in accordance with government regulations pertaining thereto.

C. Seller agrees to indemnify and hold Buyer and its customers harmless for any loss, damage or expenses, including actual attorney's fees, sustained because of Seller's non-compliance with the requirements of this paragraph or breach of any warranty in this paragraph.

**24. Assignment, Subcontracting:** Seller may not assign or subcontract this Equipment Order or any work to be performed under this Equipment Order without advance written authorization by Buyer. Any attempted assignment of this Equipment Order or the work to be performed, in whole or in part, or of any other interest hereunder without Buyer's written consent, except an assignment confined solely to monies due or to become due hereunder, is void and of no effect. Any such assignment of monies due or to become due is void and of no effect to the extent that it attempts (i) to impose upon Buyer obligations to the assignee additional to or different from Buyer's obligations to Seller under the Equipment Order and these Equipment Terms, (ii) to preclude Buyer from dealing solely and directly with Seller in all matters pertaining to the Equipment Order, including the negotiation of amendments or settlements of amounts due, or (iii) to preclude Buyer from any right of setoff or recoupment arising out of this or any other transaction. In the event of any such assignment of monies due or to become due, Seller will promptly submit to Buyer a written notice of assignment and a true copy of the instrument of assignment. Seller agrees not to subcontract for



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any complete or substantially completed materials, supplies and/or services called for by this Equipment Order without the prior written approval of Buyer. In the event that Seller does use sub-contractors, Seller must ensure that any and all of its sub-contractors are contractually bound to the Equipment Order and these Equipment Terms, and that Buyer has full recourse against the subcontractor to the same extent and degree as against Seller.

**25. Confidentiality:** Notwithstanding any separate confidentiality and non-disclosure agreements, Seller agrees to safeguard, preserve and maintain the confidential nature of all know-how, trade secrets and other confidential information disclosed to it by Buyer. Seller agrees to treat all information received by it from Buyer or Buyer's customers as confidential unless such information is or becomes public knowledge without the fault of Seller, or Buyer expressly states in writing that the information is not confidential. Seller will not disclose or otherwise make available to third parties any drawings, models, patterns, samples, and similar objects without the prior written consent of Buyer. Notwithstanding the foregoing, Seller may disclose confidential information pursuant to the order of a court of competent jurisdiction, provided Seller must first give notice to Buyer of the request or subpoena for the confidential information and Buyer must have had a reasonable opportunity to challenge or limit the disclosure pursuant to applicable rules of Civil Procedure or Court Rules. Seller agrees to include these confidentiality obligations to Buyer in any and all contracts with subcontractors. The terms of this provision will survive the expiration or termination of any Equipment Order.

**26. No Waiver:** The rights and remedies of Buyer set forth in the Equipment Order and these Equipment Terms are in addition to any other rights and remedies provided in law or equity. The failure by Buyer to exercise any rights or remedies under this Equipment Order is not a waiver of any other rights or remedies. Any delay by Buyer in exercising any rights or remedies is not a waiver or release of those rights or remedies, and will not prejudice Buyer's exercise of its rights and remedies at any time. No course of dealing between Seller and Buyer modifies or waives any rights or remedies. The exercise of any right or remedy by Buyer is not an election of remedies. Every right and remedy of Buyer provided in the Equipment Order and these Equipment Terms is cumulative, concurrent and in addition to any other further rights and remedies available in law or in equity.

**27. Choice of Law and Jurisdiction:** The construction, interpretation and performance of the Equipment Order and all transactions under or related to the Equipment Order are governed by the law of the Commonwealth of Kentucky, without regard to principles of conflicts of law. The United Nations Convention on the International Sale of Goods is expressly excluded. Any legal action against Buyer under or related to the Equipment Order must be initiated and prosecuted in Henderson Circuit Court, Henderson Kentucky. Any legal action by Buyer under or related to this Equipment Order must be initiated and prosecuted, at Buyer's option, either in Henderson Circuit Court, Henderson Kentucky, or in any court of competent jurisdiction where Seller or any other defendant is located. Seller specifically waives any and all objections to venue in such courts and agrees that a judgment or award against it resulting from any lawsuit or proceedings shall be conclusive and binding upon it and may be enforced in any other domestic or foreign jurisdiction.

**28. Attorneys' Fees:** If Buyer institutes or defends against a proceeding or lawsuit requiring interpretation or enforcement of the Equipment Order or these Equipment Terms and prevails, Buyer shall be entitled to recover its actual attorneys' fees and costs. For purposes of this paragraph, Buyer is deemed to prevail in any action it institutes if Buyer obtains a judgment or final order in



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its favor on any count or claim brought by Buyer, and Buyer is deemed to prevail in any action it defends if Buyer obtains a judgment or final order in its favor in on any count or claim brought against Buyer.

**29. Identification of Components:** Seller agrees to furnish to Buyer in writing, upon request, with all information which Buyer is required to furnish to its customer, concerning the description and identification of all components, materials, and software incorporated into the Equipment. Seller's purchase orders and contracts with its suppliers and subcontractors must include the same requirement and must also provide that this requirement be included in all purchase orders and contracts with all lower-tier suppliers, such that Seller will be able to obtain and provide to Buyer detailed information concerning every component and material incorporated in the Equipment.

**30. Severability:** These Equipment Terms are severable and if any term, condition or portion of any term or condition is stricken or declared illegal, invalid or unenforceable for any reason whatsoever, the legality, validity, or enforceability of the remaining Terms and Conditions shall not be affected thereby.

**31. Relationship of Parties:** Seller and Buyer are independent contracting parties and nothing in the Equipment Order shall make either party the agent, joint venture or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. There are no third party beneficiaries to this Equipment Order.

**32. Rights of Entry and Possession:** Buyer has the right to enter Seller's facility during normal business hours or, in the event of a Seller shutdown, at any time after reasonable notice, to inspect the facility, Equipment, materials and any property of Buyer. Seller agrees that Buyer may, without the necessity of a court order, enter upon Seller's property at any time and remove property belonging to Buyer or any customer of Buyer, including, without limitation, Buyer's Property, and, if Buyer is entitled to possession under these Equipment Terms or other applicable law, the Equipment. Notwithstanding anything to the contrary in these Equipment Terms, in the event of any breach or default by Seller of the Equipment Order or these Equipment Terms, Buyer is entitled to immediate possession of all Buyer's Property, Equipment, other goods, inventory, and Seller's Property that Seller has agreed to sell to Buyer under the Equipment Order, and Seller agrees to cooperate with Buyer's removal of these items. Buyer's inspection of the Equipment whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work in process or finished Equipment except as set forth in these Equipment Terms.

**33. Electronic Communications and Electronic Signatures:** Seller agrees to comply with any method of electronic communication specified by Buyer, including requirements for electronic funds transfer purchase order transmission, electronic signature, and communication.