



PURCHASING TERMS AND CONDITIONS

1. **EXCLUSIVE TERMS.** This order, including the Terms and Conditions contained herein, is the complete and final agreement between the Seller and the Buyer for the sale and purchase of the goods identified on the Mid State Machine Products Purchase Order. This order may be construed as an offer or an acceptance of an offer. If this order is construed as an offer, it expressly limits acceptance by Seller to the Terms of this offer and constitutes notice of objection to any additional, or different terms in the acceptance. If this order is construed as an acceptance, it is expressly conditioned on Seller's assent to any additional or different Terms contained herein. All sections of the Uniform Commercial Code, which expressly or impliedly protect a buyer, are hereby incorporated by reference in this form. No action by Buyer shall be construed as acceptance of any additional or different terms in the Seller's forms. Buyer may revoke this offer at any time prior to acceptance by Seller. Seller shall be deemed to have accepted this order by signing and returning the acknowledgement copy hereof or by other written indication of acceptance, by accepting any whole or partial payment from Buyer or by commencement of performance *provided* that, the only effect thereof shall be to accept this order on the Terms and Conditions hereof.
2. **ACCEPTANCE OF TERMS.** Seller agrees to be bound by and to comply with all terms set forth in this Order, including any amendments, supplements, specifications and other documents referred to in this Order. Acknowledgement of this Order, including without limitation by beginning performance of the work called for by this Order, shall be deemed acceptance of this Order. The terms printed on this Order take precedence over any alternative terms in any other document connected with this transaction unless such alternative terms are expressly incorporated by reference on the face of this Order. This Order does not constitute an acceptance by Buyer of any offer to sell, any quotation, or any proposal. Reference in this Order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of the terms of this Order. **ANY ATTEMPTED ACKNOWLEDGMENT OF THIS ORDER CONTAINING TERMS INCONSISTENT WITH OR IN ADDITION TO THE TERMS OF THIS ORDER IS NOT BINDING UNLESS SPECIFICALLY ACCEPTED BY BUYER IN WRITING.**
3. **PRICES AND PAYMENTS.** All prices are firm and shall not be subject to change. Seller's price includes all sovereign, state and local sales, use, excise, value added, privilege, payroll, occupational and any other taxes, fees, or duties applicable to the goods or services and includes packaging per Buyer's instructions. Seller shall ensure that if any value-added or similar tax is applicable, that it is invoiced in accordance with the applicable rules so as to allow the Buyer to reclaim that value-added or similar tax from the appropriate government authority. Neither party is responsible for taxes on the other party's income or the income of the other party's personnel or subcontractors. If the Buyer is required by government regulation to withhold taxes for which the Seller is responsible, Buyer will deduct such withholding tax from payment to Seller and provide to Seller a valid tax receipt in Seller's name. If Seller is exempt from such withholding taxes as a result of a tax treaty or other regime, Seller shall provide to Buyer a valid tax treaty residency certificate or other tax exemption certificate at a minimum of 30 days prior to payment being due. Payment Terms are as stated on the face of this Order. The Payment Start Date is the later of the required date identified on the Order, the received date of the goods or services in the Buyer's receiving system, or the date of receipt of valid invoice by Buyer. The received date of the goods in the Buyer's receiving system will occur: a) in the case where goods are shipped or services are provided directly to or at a non-Buyer/non-Customer facility in accordance with this Order, within 48 hours of Buyer receiving notice from such third party that it has received the goods or services, or b) in the case where the goods are shipped directly to Buyer or services are performed directly for Buyer, within 48 hours of receipt of such goods or services. Seller's invoice shall in all cases bear Buyer's Order number. Buyer shall be entitled to reject Seller's invoice if it fails to include the Buyer Order number or is otherwise inaccurate, and any resulting delay in payment shall be Seller's responsibility. Seller warrants that it is authorized to receive payment in the currency stated in this Order. No extra charges of any kind will be allowed unless specifically agreed in writing by Buyer. Buyer shall be entitled at any time to set-off any and all amounts owing from Seller to Buyer, or a Buyer parent, affiliate or subsidiary, on this or any other order. Seller warrants the pricing for any goods or services shall not exceed the pricing for the same or, comparable

goods or services offered by Seller to third parties. Seller shall promptly inform Buyer of any lower pricing levels for same or comparable goods or services and the Parties shall promptly make the appropriate price adjustment.

- 4. REQUIRED/DUE DATE.** The required by or due date on the Order is the date the goods are to be received at the Buyer's facility or other location specified on the Order. In the case of services, the date on the order will be defined as either the starting date, to be completed date or the time span over which the service will be provided.
- 5. DELIVERY AND PASSAGE OF TITLE.**

5.1 Time is of the essence of this Order. If Seller fails to deliver the goods or complete the services as scheduled, Buyer may assess such amounts as may be set on the face of an Order as liquidated damages for the agreed delay period. The parties agree that such amounts, if assessed, are an exclusive remedy for the agreed delay period; are a reasonable pre-estimate of the damages Buyer will suffer as a result of delay based on circumstances existing at the time the Order was issued; and are to be assessed as liquidated damages and not as a penalty. In the absence of agreed to liquidated damages, Buyer shall be entitled to recover damages that it incurs as a result of Seller's failure to perform as scheduled. Unless expressly stated to the contrary, Buyer's remedies are cumulative and Buyer shall be entitled to pursue any and all remedies available at law or equity. Further to the foregoing, Seller shall not make material commitments or production arrangements in excess of the amount, or in advance of the time, necessary to meet Buyer's delivery schedule. Should Seller enter into such commitments or engage in such production, any resulting exposure shall be for Seller's account. Unless otherwise stated on the face of this Order: a) goods shipped from within the United States of America ("US") for delivery within the US shall be delivered EXW named point with title passing at Buyer's dock; b) goods shipped from outside the US for delivery within the country of shipment shall be delivered EXW named point, with title passing at that named point; c) goods shipped from outside the US for delivery within the US shall be delivered DAF named point if by rail or truck, FCA originating airport if by air, or FOB port of export if by maritime carriage, with title passing at port of export after customs clearance for goods shipped direct to a non-Buyer facility and at Buyer's dock if shipped to Buyer's facility; and d) goods shipped from outside the United States for delivery to another country outside the United States shall be delivered DAF named point if by rail or truck, FCA destination airport if by air, or DES port of import if by maritime carriage, with title passing on EU goods when the goods leave the territorial land, air or sea space of the EU source country for goods shipped direct to a non-Buyer's EU facility and at Buyer's dock if shipped to Buyer's EU facility and title passage on all other goods at port of export after customs clearance for goods shipped direct to a non-Buyer facility and at Port of Import if shipped to Buyer's facility. All delivery designations are INCOTERMS 2000. Goods ordered by Mid-State Machine Products, Inc. and shipped to the US from outside the US shall have title pass at port of import. Buyer may specify contract of carriage and named place of delivery in all cases. Failure of Seller to comply with any such Buyer specification shall cause all resulting transportation charges to be for the account of Seller, and give rise to any other remedies available at law or equity. NOTE: In all cases, Seller must provide to Buyer, via the Packing List and the Customs Invoice (as applicable), the Country of Origin of each and every of the goods supplied pursuant to this Order, including in sufficient detail to satisfy applicable trade preferential or Customs agreements, if any.

5.2 If Buyer has contracted carriage and goods will cross an international border, Seller shall provide a Commercial Customs Invoice as required for Customs clearance. The invoice shall be in English, or destination country specific language, and shall include contact names and phone numbers at Buyer and Seller who have knowledge of the transaction; Buyer order number, Buyer order line item, release number (in the case of a blanket order), part number and detailed description of the merchandise; unit purchase price in currency of the transaction; quantity; INCOTERM and named location; and Country of Origin of the goods. In addition, all goods or services provided by Buyer

to Seller for the production of goods not included in the Purchase price shall be separately identified on the invoice (i.e. consigned material, tooling, etc.). Each invoice shall also include the applicable Order number or other reference information for any consigned goods and shall identify any discounts or rebates from the base price used in determining invoice value.

- 5.3** If Buyer has contracted carriage and goods will be delivered to a destination country having a trade preferential or customs' union agreement ("Trade Agreement") with Seller's country, Seller shall cooperate with Buyer to review eligibility of goods for any special program for Buyer's benefit and provide Buyer required documentation (e.g., NAFTA Certificate, EUR1 Certificate, GSP Declaration, FAD or other Certificate of Origin) to support the applicable special customs program (e.g., NAFTA, EEA, Lome Convention, GSP, EU-Mexico FTA, EU/Mediterranean partnerships etc) to allow duty free or reduced duty for entry of goods into the destination country. Similarly, should any Trade Agreement or special customs program applicable to the scope of this Order exist at any time during the execution of the same, and be of benefit to Buyer in Buyer's judgment, Seller shall cooperate with Buyer's efforts to realize any such available credits, including counter-trade or offset credit value which may result from this Order, and acknowledges that such credits and benefits shall inure solely to Buyer's benefit. Seller shall indemnify Buyer for any costs, fines, penalties or charges arising from Seller's inaccurate documentation or untimely cooperation. Seller shall immediately notify Buyer of any known documentation errors.
- 6. BUYER'S PROPERTY.** Unless otherwise agreed in writing, all tangible and intangible property, including, but not limited to, information or data of any description, tools, materials, drawings, computer software, know-how, documents, equipment or material furnished to Seller by Buyer or specially paid for by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain Buyer's personal property. Such property and, whenever practical, each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as Buyer's property and shall be safely stored separate and apart from Seller's property. Seller shall use Buyer's property only to meet Buyer's orders, and shall not use it, disclose it to others or reproduce it for any other purpose. Such property, while in Seller's custody or control, shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense.
- 7. DRAWINGS.** Any review or approval of drawings by Buyer will be for Seller's convenience and will not relieve Seller of its responsibility to meet all requirements of this Order.
- 8. ADDITIONS.** No extra work, materials, additions or alterations will be paid for by the Buyer without prior written acceptance from the Buyer. Seller shall submit in writing to the Buyer, details of the request for additions prior to executing them.
- 9. SAMPLES.** Samples may be requested for inspection and approval prior to Seller fulfilling requirements of this Order.
- 10. PATENTS.** Seller warrants that the material delivered, either alone or in combination with other materials, will not infringe **on any** patents in the United States or any foreign country.
- 11. CANCELLATION.** Time is of the essence and Buyer may cancel this order, in whole or in part, without liability to Buyer if deliveries are not made at the time and in the quantities specified, or in the event of any other breach or failure of any of the Terms and Conditions hereof, or for the convenience of the Buyer any time prior to shipment of the goods by the Seller. In the case of cancellation, all Buyer assets (material, tooling, etc) shall be promptly returned to Buyer at Seller's expense.
- 12. CHANGES.** Buyer may at any time make changes within the general scope of this Order in any one or more of the following: a) drawings, designs or specifications where the goods to be furnished are to be specially manufactured for Buyer; b) method of shipment or packing; c) place and time of delivery; d) amount of Buyer's furnished property; e) quality; f) quantity; or g) scope or schedule of services. If any changes cause an increase or decrease in the cost of, or the time required for the performance of, any work

under this Order, an equitable adjustment shall be made in the Order price or delivery schedule, or both, in writing. Any Seller claim for adjustment under this clause will be deemed waived unless asserted within ten (10) days from Seller's receipt of the change or suspension notification, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change. Any change to this Order shall be made by a signed amendment.

13. PLANT ACCESS / INSPECTION: All goods and materials related in any way to the goods and services (including without limitation raw materials, components, intermediate assemblies, work in process, tools and end products) shall be subject to inspection and test upon reasonable notice by Buyer and its customer or representative at all times and places, including sites where the goods and services are created or performed, whether they be at premises of Seller, Seller's suppliers or elsewhere, to assess: 1) work quality; 2) conformance with Buyer's specifications; and 3) conformance with Seller's representations, warranties and covenants. If any inspection or test is made on Seller's or its supplier's premises, Seller, without additional charge, shall provide all reasonable access and assistance for the safety and convenience of the inspectors. If specific Buyer and/or Buyer's customer tests, inspection and/or witness points are included in this Order, the goods shall not be shipped without an inspector's release or a written waiver of test/inspection/witness with respect to each such point; however, Buyer shall not be permitted to unreasonably delay shipment; and Seller shall notify Buyer in writing at least twenty (20) days prior to each of Seller's scheduled final and, if applicable, intermediate test/inspection/witness points. Buyer's final inspection, to include acceptance or rejections of the goods, shall be made as promptly as practical after delivery, except as otherwise provided in this Order. Failure to inspect, accept, reject or detect defects by inspection shall neither relieve Seller from responsibility for such goods, as are not in accordance with the Order requirements nor impose liabilities on Buyer. Seller shall provide and maintain an inspection and process control system acceptable to Buyer and its customer covering the goods and services and shall keep complete records available to Buyer and its customer for three years after completion of this Order.

14. REJECTION. If any element of performance pursuant to this Order is found at any time prior to expiration of warranty to be defective or otherwise not in conformity with the requirements of this Order, including any applicable drawings and specifications, whether such defect or non-conformity relates to scope provided by Seller or a direct or indirect supplier to Seller, Buyer, in addition to other rights, remedies and choices it may have by contract or by law, and in addition to seeking recovery of any and all damages and costs emanating there from, at its option and sole discretion, may at Seller's expense: a) rescind this Order without liability; b) reject and return such goods or services; c) take action to cure all defects and/or bring the goods into conformity with all requirements, allocating all costs, expenses (including material, labor and handling costs, and any required re-performance of value added machining or other service), and other reasonable charges for Seller's account; d) withhold total or partial payment; and/or e) require Seller to immediately re-perform any defective portion of the services performed and/or require Seller to immediately replace non-conforming goods with goods that conform to this Order. For any repairs or replacements, Seller shall perform any tests requested by Buyer to verify conformance to this Order. Cost for tests shall be born by Seller.

15. WARRANTIES. Seller warrants that all goods and services provided pursuant to this Order, whether provided by Seller or a direct or indirect supplier of Seller, will be free of any claims of any nature, including without limitation title claims, and will cause any lien or encumbrance asserted to be discharged, at its sole cost and expense, within thirty (30) days of its assertion (provided such liens do not arise out of Buyer's failure to pay amounts not in dispute under this Order or an act or omission of Buyer). Seller warrants and represents that all such goods and services will be new and of merchantable quality, not used, rebuilt or refurbished material unless approved in writing by Buyer, free from all defects in design, workmanship and material, and will be fit for the particular purpose for which they are intended. Such goods and services will be provided in strict accordance with all specifications, samples, drawings, designs, descriptions or other requirements approved or adopted by Buyer. Any attempt by Seller to limit, disclaim, or restrict any such warranties or remedies by acknowledgment or otherwise shall be null, void and

ineffective. Buyer at its option and sole discretion and at Seller's expense may: (a) reject and return such goods and services; (b) require Seller to remove, ship and reinstall/repertory nonconforming goods and/or services with goods and/or services that conform to all the requirements of this Purchase Order; and/or (c) take such actions as may be required to cure all defects and/or bring the goods and services into conformity with all the requirements of this Order, in which event all costs and expenses including material, labor and handling costs and charges (inclusive of any required re-performance of value added machining or other service), incurred by Buyer shall be for Seller's account.

16. SUSPENSION. Buyer may at any time, by notice to Seller, suspend performance of the work for such time, as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend work to the extent specified, properly caring for and protecting all work in progress and materials, supplies, and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials, equipment and service for the work, and shall take such action relative to such purchase orders and subcontracts as Buyer may direct. Buyer may at any time withdraw the suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal. All claims for increase or decrease in the cost of, or the time required for the performance of any work caused by suspension shall be pursued pursuant to, and consistent with, the Changes clause.

17. TERMINATION. Buyer may terminate all or any part of this Order at any time by written notice to Seller. Upon termination (other than due to Seller's insolvency or default including failure to comply with this Order), Buyer and Seller shall negotiate reasonable termination costs consistent with costs allowable and identified by Seller within 30 days of termination notice, unless the parties have agreed to a termination schedule in writing.

18. DEFAULT. Except for delay due to causes beyond the control and without the fault or negligence of Seller and all of its suppliers (lasting not more than 60 days), Buyer may by written notice of default, terminate the whole or any part of this Order if Seller: a) fails to perform within the time specified or any written extension granted by Buyer; b) fails to make progress which, in Buyer's reasonable judgment, endangers performance of this Order in accordance with its terms; or c) fails to comply with any of the terms of this Order. Such termination shall become effective if Seller does not cure such failure within ten (10) days of receiving notice of default. Upon termination, Buyer may procure at Seller's expense and upon terms it deems appropriate, goods or services similar to those so terminated. Seller shall continue performance of this Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar goods or services. As an alternate remedy and in lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, making Seller liable for any costs, expenses or damages arising from any failure of Seller's performance. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule, Buyer may require delivery by fastest method and charges resulting from the premium transportation must be fully prepaid by Seller. Buyer's rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Order.

19. INSOLVENCY/PROLONGED DELAY. If Seller ceases to conduct its operations in the normal course of business, fails to meet its obligations as they mature, if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made, or an excused delay (or the aggregate time of multiple excused delays) lasts more than 60 days, Buyer may immediately terminate this Order without liability, except for goods or services completed, delivered and accepted within a reasonable period after termination (which will be paid for at the Order price).

- 20. INDEMNIFICATION.** Seller agrees to defend, indemnify and hold Buyer, its employees, customers, successors and assigns, harmless against any claim demand, action, proceeding, liability, loss, cost or expense whatsoever, including attorney's fees, arising in connection with any actual or alleged (a) defect in the goods, (b) failure by Seller to comply with Buyer's specifications or with the express or implied warranties of Seller, (c) violation by the goods, or in their manufacture or sale, of any federal, state or local law, rule or regulation, (d) infringement of any patent, trademark, trade name, trade secret, copyright or other property right by reason of the sale or use of the goods ordered, or (e) enforcement by Buyer of its rights hereunder. In the event of any claim, demand, action or proceeding being commenced against Buyer by reason of any of the above matters, Buyer shall give Seller prompt notice hereof in writing.
- 21. ASSIGNMENT AND SUBCONTRACTING.** Seller may not assign (including by change of ownership or control) this Order or any interest herein including payment, without Buyer's prior written consent. Seller shall not subcontract or delegate performance of all or any substantial part of the work called for under this Order without Buyer's prior written consent. Should Buyer grant consent to Seller assignment or subcontract, such assignee or subcontractor shall be bound by the terms and conditions of this Order. Further, Seller shall advise Buyer of any subcontractor or supplier to Seller: a) that will have at their facility any parts or components with Buyer's, or any of its affiliates or subsidiaries, name, logo or trademark (or that will be responsible to affix the same); and/or b) 50% percent or more of whose output from a specific location is purchased directly or indirectly by Buyer. In addition, Seller will obtain for Buyer, unless advised to the contrary in writing, written acknowledgement by assignee, subcontractor and/or supplier to Seller of its commitment to act in a manner consistent with Buyer's integrity policies, and to submit to, from time to time, on-site inspections or audits by Buyer or Buyer's third party designee as requested by Buyer. Buyer may assign this Order to any affiliate, subsidiary or parent company upon notice to Seller. If Seller subcontracts any part of the work outside the country of purchase, Seller shall be responsible for Customs formalities to the country of Order placement unless the Order INCOTERMS state otherwise and Buyer may direct contract of carriage. Seller shall agree with Buyer on a mutually acceptable Customs Broker; however, Seller shall in no way be relieved from its responsibilities for Customs formalities, including the actions of the selected Customs Broker.
- 22. PROPER BUSINESS PRACTICES.** Seller shall act in a manner consistent with all laws concerning improper or illegal payments and gifts or gratuities, and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Order. Further, in the execution of its obligations under this Order, Seller shall take the necessary precautions to prevent any injury to persons or to property.
- 23. COMPLIANCE WITH LAWS** Seller represents, warrants, certifies and covenants that it will comply with applicable provisions of any federal, state, provincial or local law, regulation, directive or ordinance and all lawful orders, rules, and regulations issued there under, in the country of intermediate and/or final delivery of goods or provision of services, including without limitation those dealing with environmental health and safety, and records retention. Seller shall also comply with good industry practices, including the exercise of that degree of skill, diligence, prudence and foresight which can reasonably be expected from a competent Seller who is engaged in the same type of service or manufacture under similar circumstances in a manner consistent with all applicable requirements and with all applicable generally recognized international standards. No forced or prison labor, or labor in violation of minimum working age law in the country of manufacture, may be used in connection with this Order. If forced or prison labor, or labor below applicable minimum working age, is determined to have been used in connection with this Order, Buyer shall have the right to immediately terminate the Order without further compensation. Seller agrees to cooperate fully with audit or inspection efforts of Buyer intended to verify compliance by Seller with Sections 16 or 17 of this Order. Seller further agrees to provide at Buyer's request certificates relating to

any applicable legal requirements or to update any and all of the certifications, representations and warranties under this Order, in form and substance satisfactory to Buyer.

24. CONFIDENTIAL OR PROPRIETARY INFORMATION AND PUBLICITY. Seller shall keep confidential any technical, process, proprietary or economic information derived from drawings, 3D or other models, specifications and other data furnished by Buyer in connection with this Order and shall not divulge, directly or indirectly, such information for the benefit of any other party without Buyer's prior written consent. Except as required for the efficient performance of this Order, Seller shall not use such information or make or permit copies to be made of such drawings, models, proprietary information, specifications, or other data without Buyer's prior written consent. If any reproduction is made with prior written consent, notice referring to the requirements of the foregoing paragraph shall be provided thereon. Upon completion or termination of this Order, Seller shall promptly return to Buyer all materials incorporating any such information and any copies thereof. Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer, and which in any way relates to the goods or services offered by this Order (except to the extent deemed to be Buyer's Property as set forth in Section 4, above), shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary, and shall be acquired by Buyer free from any restrictions (other than a claim for infringement), as part of the consideration for this Order and, notwithstanding any copyright or other notice thereon, Buyer shall have the right to use, copy, modify and disclose the same as it sees fit. Seller shall not make any announcement, take or release any photographs (except for its internal operation purposes for manufacture and assembly of goods), or release any information concerning this Order or any part thereof or with respect to its business relationship with Buyer, to any third party, member of the public, press, business entity, or any official body except as required by applicable law, rule, injunction or administrative order, without Buyer's prior written consent.

25. INTELLECTUAL PROPERTY. Seller shall indemnify, defend and hold Buyer harmless from all cost and expenses related to any suit, claim or proceeding brought against Buyer or its customers based on a claim that any article or apparatus, or any part thereof constituting goods or services furnished under this Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent, copyright, trademark, trade secret or other intellectual property right of any third party. Buyer shall notify Seller promptly and give authority, information, and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein. If use of said article, apparatus, part, device or process is enjoined, Seller shall, at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part, process or device, or replace same with a non-infringing equivalent.

26. PACKING, PRESERVATION AND MARKING. Packing, preservation and marking will be in accordance with the specification drawing or as specified on the Order, or if not specified, best commercially accepted practice will be used, and at a minimum consistent with applicable law. The Country of Origin for all goods shipped across international borders shall be marked in a conspicuous location as legibly, indelibly and permanently as the nature of the article or container will permit, so as to clearly indicate to Buyer and Customs the origin of the goods. The gross and net weight, shipping address, mode of packing, and in case of over-dimensional shipment the hook-points, and stacking ability shall be marked on the packing.

27. GOVERNING LAW. This Order shall in all respects be governed by and interpreted in accordance with the substantive law of the State of New York, U.S.A., excluding its conflicts of law provisions. The parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

28. DISPUTE RESOLUTION

28.1 If Seller is a permanent resident of the US, or a corporation or partnership existing under the laws of any of the US, Buyer and Seller shall attempt amicably to resolve any controversy, dispute or difference arising out of this Order, failing which either party may initiate litigation. Litigation may be brought only in the US District Court for the Southern District of New York or, if such court lacks subject matter jurisdiction, in the Supreme Court of the State of New York in and for New York County. The parties submit to the jurisdiction of said courts, and waive any defense of *forum non conveniens*.

28.2 If Seller is a permanent resident of a country other than the US, or is a corporation or partnership existing under the laws of any country other than the US, the parties shall attempt amicably to resolve any controversy, dispute or difference arising out of this Order, failing which either party may submit such dispute to arbitration in accordance with the Rules of Arbitration and Conciliation of the International Chamber of Commerce ("ICC"). Arbitration expenses shall be borne equally by the parties but each party shall pay its own attorneys' fees. Venue for arbitration shall be London, England, and proceedings shall be conducted in the English language. The President of the ICC shall upon the request of either party make any appointment not timely made by the other party. The award shall be final and binding on both Buyer and Seller, and the parties hereby waive the right of appeal to any court for amendment or modification of the arbitrators' award.

- 29. WAIVER.** No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. Either party's failure to enforce any provisions hereof shall not be construed a waiver of a party's right thereafter to enforce each and every such provision.
- 30. FORCE MAJEURE.** The consequences, direct or indirect, of labor disputes, fires, floods, acts of God, war or any other cause or condition beyond the reasonable control of Buyer or Seller, shall excuse performance to the extent which such performance has been prevented by such occurrence. In the event that either party shall be unable to perform any of its obligations, it shall advise the other of its inability to perform. If the cause is not removed within 60 days, Buyer, in addition to its other remedies, may cancel this order.
- 31. SERVICES.** If Seller is to perform any services on the premises of the Buyer, Seller shall indemnify and hold Buyer harmless from any claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the provision of such services, including, but not limited to, injury to employees of Seller or to third parties of damage to property. Prior to the performance of such services, Seller shall provide Buyer with certificates showing the following types of insurance in such amounts and by insurance carriers acceptable to Buyer: Worker's compensation, public liability, property damage, automobile, pressure vessel and such other special coverage as conditions may require.
- 32. HAZARDOUS MATERIALS.** Before any chemical, material or equipment that contains a chemical is permitted to be brought into or onto a Buyer facility, a Material Safety Data Sheet (MSDS) must be forwarded to the plant safety engineer who will complete a review and approve or reject the acceptance of the shipment(s). Shipment(s) made to buyer facility not following this procedure will be rejected at Buyer's dock and returned to Seller at its sole expense and liability.
- 33. ENTIRE AGREEMENT.** This Order, with documents as are expressly incorporated by reference, is intended as a complete, exclusive and final expression of the parties' agreement with respect to such terms as are included herein. This Order may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument. Facsimile signatures on such counterparts are deemed originals. No course of prior dealings and no usage of the trade shall be relevant to determine the meaning of this Order even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. The term "including" shall mean and be construed as "including, but not limited to", unless expressly stated to the contrary. The invalidity, in whole or in part, of any of the foregoing articles or paragraphs of this Order shall not affect the remainder of such article or paragraphs or any other article or paragraphs of this Order. All provisions or obligations contained in this Order which by their nature or effect are required or intended to be observed, kept or performed after termination or expiration of an Order will survive and remain binding upon and for the benefit of the parties, their successors (including without limitation successors by merger) and permitted assigns including, without limitation, Sections 4, 5, 8, 9, 14, 17, 18, and 19.