

**Table of Contents**

1. *Acceptance and terms of order*
2. *Delivery*
3. *Delays in delivery*
4. *Payment*
5. *Set-off and recoupment*
6. *Changes*
7. *Seller's warranties*
8. *Defective or non-conforming goods*
9. *Customs drawback documents*
10. *Certificates of origin*
11. *Termination for breach*
12. *Termination upon insolvency or bankruptcy*
13. *Termination for convenience upon notice*
14. *Indemnification*
15. *Compliance with laws*
16. *Insurance*
17. *Seller's entry upon buyer's premises*
18. *Customer terms*
19. *Time period of order*
20. *Confidentiality and non-disclosure*
21. *Website terms and requirements*
22. *Right of buyer to perform*
23. *Assignment*
24. *Relationship of parties*
25. *Modifications*
26. *Remedies*
27. *Waiver*
28. *Severability*
29. *Survival*
30. *Notices*
31. *Governing law*

## **1 ACCEPTANCE AND TERMS OF ORDER**

- 1.1 Each purchase order and purchase order revision (“this Order”) issued by Buyer is an offer to Seller for the purchase of goods and/or services, and includes and is governed by the express terms contained on the face of this Order, these purchase order terms and conditions and the terms contained in any release, addendum or supplement to this Order, any supplier manual made available to Seller by Buyer and any other document incorporated by reference into this Order or into these purchase order terms and conditions (collectively, the “Terms”). Any expression of acceptance of this Order by Seller, including Seller’s (i) commencement of work on the goods subject to this Order (the “Goods”) or shipment of the Goods, whichever occurs first, or (ii) performance of all or any portion of the services subject to this Order (the “Services”), shall constitute an acceptance of Buyer’s offer. Any acceptance of this Order is limited to and conditional upon Seller’s acceptance of the Terms. Any proposal for additional or different terms or any attempt by Seller to vary any of the Terms, whether in Seller’s quotation form, acknowledgement form, invoice, correspondence or otherwise, shall be deemed material and is hereby objected to and expressly rejected by Buyer. Buyer may cancel all or any part of this Order at any time prior to Buyer’s actual knowledge of acceptance by Seller.
- 1.2 The reference herein to Buyer shall mean A V Gauge & Fixture Inc.
- 1.3 This Order contains the entire agreement between Buyer and Seller and, except as otherwise expressly stated in this Order, supersedes all prior agreements, orders, quotations, proposals and other communications relating to the subject matter hereof and there are no other understandings or agreements, verbal or otherwise, in relation hereto that exist between Buyer and Seller.
- 1.4 Where this Order is marked “Blanket Order” on the face thereof, this Order shall not be binding on the Buyer except to the extent that the Buyer shall commit itself in a written release authorization to the Seller, specifying the shipping date, quantity and destination of the Goods or Services. Buyer shall not be required to issue any release authorization whatsoever. The terms of the Blanket Order shall remain in effect until the expiration date shown on the face thereof or until cancelled by Buyer. Seller may cancel the Blanket Order only upon giving Buyer one hundred twenty (120) days notice in writing, unless otherwise specified on the face of this Order.
- 1.5 In the event of any conflict between the face of this Order and these purchase order terms and conditions, the face of this Order shall govern.

## **2 DELIVERY**

- 2.1 The Goods are to be suitably prepared for shipment and must be labeled, packed and shipped in accordance with Buyer’s specifications, as specified in this Order and/or in any written directions and/or instructions as may be provided by Buyer to Seller from time to time. If the Goods are not shipped in accordance with Buyer’s specifications, Seller shall pay or reimburse Buyer for any excess costs occasioned thereby. Seller will be responsible for all expenses of labeling, packing, boxing, crating, handling, insurance, storage and freight (to Buyer’s “ship to” location as set forth in this Order), unless otherwise expressly stated in this Order.
- 2.2 Deliveries will be made in the quantities, on the dates and at the times specified by Buyer in this Order or any subsequent releases or instructions Buyer may issue under this Order. Time is of the essence with respect to all delivery schedules established by Buyer. Buyer will not be required to pay for any goods that exceed the quantities specified in Buyer’s delivery schedules nor to accept goods that are delivered in advance of the delivery date specified in Buyer’s delivery schedules. Seller bears the risk of loss of all goods delivered in advance of the delivery date specified in Buyer’s delivery schedules. If the requirements of Buyer’s customers or market, economic or other conditions require changes in delivery schedules, Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation.
- 2.3 Buyer may provide Seller with estimates, forecasts or projections of its future anticipated volume or quantity requirements for goods. Seller acknowledges that any such forecasts are provided for informational purposes only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which may change over time. Buyer makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts provided to Seller, including with respect to the accuracy or completeness of such forecasts.
- 2.4 Unless otherwise expressly stated in the Purchase Order, (i) all goods shall be delivered, in accordance with Buyer’s specifications and/or any written directions and/or instructions as may be provided to Seller by Buyer from time to time, by Seller at Seller’s expenses and Buyer shall not be liable for any insurance, storage, parking or detention charges, (ii) prices include customs duties, tariffs and all federal, provincial, state and local taxes (including all import taxes, excise taxes and sales taxes) applicable to the Supplies (iii) any reduction in Seller’s cost resulting from a reduction in transportation charges, customs duties, import taxes, excise taxes and/or sales taxes from those in effect on the date of the Purchase Order shall be paid to Buyer by Seller as a reduction in the price
- 2.5 If Buyer is required by law to make any deduction or withholding from any sum otherwise payable to Seller under this Order, Buyer shall be entitled to deduct or withhold such amount and effect payment thereof to the applicable tax authority. Buyer will, upon request from Seller, provide to Seller official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that any taxes which are withheld have been paid.

### **3 DELAYS IN DELIVERY**

- 3.1 If Seller fails or refuses to proceed with this Order or fails to deliver the Goods or perform the Services within the delivery dates and times specified in this Order, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, cancel the then remaining balance of this Order, unless the delay is an excusable delay, as hereinafter defined. In addition, if Seller fails to meet the delivery dates or times of the Goods, other than by reason of an excusable delay, Buyer may, without limiting or affecting its other rights or remedies available hereunder or at law, direct expedited shipment and/or incur premium freight or transportation costs, and Seller shall pay upon demand all excess costs incurred thereby, including additional handling charges and other expenses (whether related or not) resulting therefrom. Seller shall be responsible for all other direct, consequential, and incidental damages incurred by Buyer as a result of Seller's failure to meet the delivery dates or times, other than by reason of an excusable delay, including the cost of any line shutdown and the cost of obtaining goods from an alternate source. Buyer's actions in obtaining substitute or replacement products shall not limit the rights and remedies available hereunder or at law.
- 3.2 The term "excusable delay" means any delay in making or accepting deliveries or performance which results without fault or negligence on the part of the party involved and which is due to causes beyond its reasonable control, such as acts of God or of a public enemy, any preference, priority or allocation order issued by government or any other act of government, fires, floods, epidemics, freight embargoes, explosions, riots, war, terrorism and delays of a supplier due to such causes. The term "excusable delay" shall not, however, mean or include any delay arising from or as a result of: (i) Seller's financial difficulties; (ii) a change in cost or availability of materials or components based on market conditions or supplier actions affecting Seller; or (iii) any labor strike or other labor disruption applicable to Seller or to any of its subcontractors or suppliers that are engaged in manufacturing or providing goods or services to Seller in connection with Seller's obligations under this Order.
- 3.3 An excusable delay shall not constitute a default hereunder, provided that if Seller is subject to one or more excusable delays that persist for more than fifteen (15) days in the aggregate, Buyer may cancel the then remaining balance of this Order without any liability whatsoever to the Seller and without limiting or otherwise affecting its other rights or remedies available hereunder or at law.
- 3.4 Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential delay. Whenever any actual or potential delay threatens to delay deliveries or Seller's performance under this Order, Seller shall immediately give written notice thereof to Buyer. Such notice shall include all relevant information with respect to such delay, including the anticipated duration and impact of such delay.

### **4 PAYMENT**

- 4.1 Buyer shall pay net invoice(s) (subject to applicable withholding taxes, if any) on the terms set forth in this Order.
- 4.2 Notwithstanding the foregoing paragraph, Buyer shall pay approved net invoice(s) by the later of: (i) in the last week of the month that follows the month in which the invoice(s) was/were approved; or (ii) as expressly stated in the Purchase Order.
- 4.3 Seller warrants that the prices in this Order shall be complete, and no surcharges, premiums or other additional charges of any type shall be added, without Buyer's prior written consent. Seller expressly assumes the risk of any event or cause (whether or not foreseen) affecting such prices, including any foreign exchange rate changes, increases in raw materials costs, inflation or increases in labor and other manufacturing costs.

### **5 SET-OFF AND RECOUPMENT**

- 5.1 In addition to any right of set-off or recoupment provided by law, all amounts due to Seller shall be considered net of indebtedness or obligations of Seller and its subsidiaries and affiliates to Buyer and its subsidiaries and affiliates. Buyer and its subsidiaries and affiliates shall have the right to set-off against or recoup from any payment or other obligation owed to Seller, in whole or in part, any amounts due to Buyer or its affiliates or subsidiaries from Seller or its affiliates and subsidiaries, however and whenever arising. Buyer may do so without notice to Seller or its subsidiaries and affiliates. If any obligations of Seller or its subsidiaries or affiliates to Buyer or its subsidiaries or affiliates are disputed, contingent or unliquidated, Buyer may defer payment of amounts due until such obligations are resolved.

### **6 CHANGES**

- 6.1 Buyer reserves the right to direct changes, or to cause the Seller to make changes, to the drawings, specifications, and other provisions of this Order. If any such change results in an increase or a decrease in the cost of, or the time required for, manufacturing or delivering the Goods or performing the Services, an equitable adjustment may be made in the price or delivery schedule, or both, and this Order shall, subject to the agreement of Buyer and Seller, be modified in writing accordingly. No claim under this paragraph shall be asserted by Seller after fourteen (14) days following the notification of the change by the Buyer.

Seller shall not, without Buyer's prior written authorization, make any changes to specifications, designs, materials, processes, packing, shipping or date or place of delivery.

## **7 SELLER'S WARRANTIES**

- 7.1 Seller expressly warrants that the Goods and the Services shall: (i) conform to all drawings, specifications, samples and other descriptions furnished, specified or adopted by Buyer; (ii) comply with all applicable laws, regulations, rules, codes and standards of the jurisdictions in which the Goods or the Services, and the products containing the Good and Services, are to be sold; (iii) be merchantable; (iv) be free from any defects in design, to the extent furnished by Seller, even if the design has been approved by Buyer; (v) be free from any defects in materials and workmanship; (vi) be fit, sufficient and suitable for the particular purpose for which Buyer intends to use the Goods or the Services; and (vii) be free of all liens, claims and encumbrances whatsoever. The foregoing warranties of the Seller are referred to herein and in this Order as the "Seller's Warranties". Seller acknowledges that Seller knows the particular purpose for which Buyer intends to use the Goods or the Services.
- 7.2 The Seller's Warranties are available to, and for the benefit of, Buyer, its subsidiaries and affiliates, their respective successors and assigns and users of products containing the Goods or the Services. The warranty period shall be that provided by applicable law, except that if Buyer is obligated to provide a longer warranty period to a customer such longer period shall apply. The Seller's Warranties shall be in addition to all other warranties available under applicable law.
- 7.3 Seller shall indemnify and hold Buyer and its representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any nature or kind (including consequential and special damages, personal injury, property damages, lost profits, recall or other customer field service action costs, production interruption costs, inspection, handling and reworking charges, professional and other legal fees, and other costs associated with Buyer's administrative time, labor and materials) arising from or as a result of: (i) any breach of the Seller's Warranties; and (ii) any other acts, omissions or negligence of Seller or of any of its subcontractors or suppliers in connection with Seller's performance of its obligations under this Order. No limitations on Buyer's rights or remedies in any of Seller's documents shall operate to reduce or exclude such indemnification.

## **8 DEFECTIVE OR NON-CONFORMING GOODS OR SERVICES**

- 8.1 If any of the Goods or the Services fail to meet the Seller's Warranties or are otherwise defective or non-conforming in any respect, Seller shall, upon notice thereof from Buyer at any time, promptly repair, replace or otherwise satisfactorily deal with the same in a manner acceptable to Buyer, all at Seller's expense and without limiting or affecting Buyer's other rights or remedies available hereunder or at law. The Seller's Warranties shall also apply to such repaired, replaced or otherwise satisfactorily dealt with Goods or Services. If the Seller fails to repair, replace or otherwise deal with any defective or non-conforming Goods or Services in a manner acceptable to Buyer, Buyer may, without limiting or affecting Buyer's other rights or remedies available hereunder or at law, cancel this Order as to the particular Goods or Services and/or cancel the then remaining balance of this Order. After notice to Seller, all defective or non-conforming Goods shall be held at Seller's risk. Buyer may, and at Seller's direction shall, return such defective or non-conforming Goods to Seller at Seller's risk and Seller shall promptly pay, upon Buyer's demand, all transportation and other applicable charges, both to and from the original destination. Any payment made by Buyer for defective or nonconforming Goods or Services shall be refunded by Seller, except to the extent that Seller promptly replaces or corrects the same at Seller's expense. None of Buyer, its subsidiaries or affiliates, or their respective successors, assigns, representatives, employees, agents or customers shall be liable for any liabilities, claims, demands, costs, damages or expenses of any kind or nature (including personal injury, property damage, consequential or special damages) arising from or as a result of improper, unsafe or defective materials, workmanship or design of the Goods or Services.
- 8.2 Buyer has the right to inspect any and all of the Goods, both prior to and after making payment thereof. Seller acknowledges and agrees that Buyer may choose not to perform incoming inspections with respect to the Goods, without prejudice to any rights or remedies available to Buyer hereunder or at law, and Seller waives any rights to require Buyer to conduct such inspections.
- 8.3 Buyer's payment for and/or acceptance of the Goods or the Services shall not relieve Seller from any of its obligations and/or warranties under this Order. In no event shall payment for the Goods or the Services be deemed to constitute acceptance by or on behalf of Buyer for any other purpose hereunder or at law.

## **9 CUSTOMS DRAWBACK AND EXPORT CONTROLS**

- 9.1 Upon request, Seller shall promptly furnish to Buyer all documents and other information required for customs drawback purposes, properly completed in accordance with applicable governmental regulations. Unless otherwise expressly stated in this Order, all customs drawback shall be reserved and retained for, or credited to, Buyer.
- 9.2 Export licenses or authorizations necessary for the export of the Goods shall be the responsibility of Seller unless otherwise expressly stated in this Order, in which case Seller shall provide such information as may be necessary to enable Buyer to obtain



such licenses or authorizations. Seller shall undertake such arrangements as are necessary for the Goods to be covered by any duty deferral or free trade zone programs of the country of import.

- 9.3 To the extent that any Goods covered by this Order are to be imported into the United States of America, Seller shall, upon Buyer's request, comply with all applicable recommendations or requirements of the United States Bureau of Customs and Border Protection's Customs-Trade Partnership Against Terrorism initiative or any successor or replacement initiative or program. To the extent that any Goods covered by this Order are to be imported into Canada, Seller shall, upon Buyer's request, participate in the Canada Border Services Agency's Partners in Protection program or any successor or replacement initiative or program. Upon request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Buyer harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including legal and other professional fees) arising from or relating to Seller's non-compliance with the foregoing.

## **10 CERTIFICATES OF ORIGIN**

- 10.1 Seller shall promptly furnish to Buyer all certificates of origin or domestic value added and all other information relating to the costs and places of origin of the Goods, or the Services and the materials contained therein or used in the performance thereof, as may be required by Buyer to comply fully with all customs, tariffs and other applicable governmental regulations. The seller shall comply with all such regulations. Seller shall indemnify and hold Buyer, its subsidiaries and affiliates and their respective successors, assigns, representatives, employees and agents harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any nature or kind (including fines and penalties) arising from or as a result of: (i) Seller's delay in furnishing such certificates or other information to Buyer; (ii) any errors or omissions contained in such certifications; and (iii) any non-compliance by Seller with such regulations.

## **11 TERMINATION FOR BREACH**

- 11.1 Buyer may terminate all or any part of this Order without any liability to Seller or any obligation to purchase raw materials, work-in-process or finished goods if Seller (a) repudiates, breaches, or threatens to breach any of the terms of this Order, including Seller's Warranties, (b) fails to perform or threatens not to perform the Services or deliver the Goods in accordance with this Order or (c) fails to assure timely and proper completion of Services or delivery of Goods. Seller shall be liable for all costs, damages and expenses incurred or suffered by Buyer which are caused by or result from its default under or breach of any provision of this Order.

## **12 TERMINATION UPON INSOLVENCY OR BANKRUPTCY**

- 12.1 Either party may terminate this Order, without liability to the other party: (i) in the event of the insolvency, bankruptcy, reorganization, arrangement, receivership or liquidation by or against the other party; (ii) in the event that the other party makes an assignment for the benefit of its creditors or ceases to carry on business in the ordinary course; or (iii) if a receiver is appointed in respect of the other party or all or part of its property. In the event of such termination, the other party shall be liable for all costs, damages and expenses suffered by the party that terminates this Order.

## **13 TERMINATION FOR CONVENIENCE UPON NOTICE**

- 13.1 In addition to any other rights of Buyer to terminate this Order, Buyer may, in its sole discretion, upon five (5) days prior written notice to Seller or, if applicable, such shorter period as may be required by a customer of Buyer, terminate this Order for convenience or any other reason, in whole or in part at any time, and notwithstanding the existence of any excusable delay or other events or circumstances affecting Seller. Buyer's notice to Seller may be given by facsimile, e-mail or other form of electronic transmission, and shall state the extent and effective date of termination. Seller may not terminate this Order for convenience or any other reason, except as otherwise expressly provided in this Order.
- 13.2 Upon such termination, Buyer may, at its option, purchase from Seller any or all raw materials, work-in-process and finished goods inventory related to the Goods under this Order which are useable and in a merchantable condition. The purchase price for such finished goods, raw materials and work-in-process, and Seller's sole and exclusive recovery from Buyer (without regard to the legal theory which is the basis for any claim by Seller) on account of such termination, will be (a) the contract price for all goods or services that have been completed in accordance with this Order as of the termination date and delivered and accepted by Buyer and not previously paid for, plus (b) the actual costs of work-in-process and raw materials incurred by Seller in furnishing the goods and services under this Order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Order less (c) the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent. In no event will Buyer be required to pay for finished goods, work-in-process or raw materials which Seller fabricates or procures in amounts that exceed those Buyer authorizes in delivery releases nor will Buyer be required to pay for any goods or materials that are in Seller's standard stock or that are readily marketable. Payments made under this Article will not exceed the aggregate price for finished goods that would be produced by the Seller under delivery or release schedules outstanding at the date of termination. Within sixty (60) days after the effective date of termination. Seller will submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit



an audit by Buyer, and will thereafter promptly furnish any supplemental and support information Buyer requests. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or indirectly (whether on account of claims by Seller's subcontractors or otherwise), for any loss arising from or attributable to failure to realize anticipated revenue, savings or profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation cost or general and administrative burden charges from a termination of this Order. In the event of a termination of this Order by Buyer as a result of Buyer ceasing to be a supplier to a customer for a vehicle program in respect of which Buyer issued this Order, Buyer shall only be obligated to compensate Seller for any costs under this paragraph if, when and to the extent that the customer reimburses Buyer for such costs.

## **14 INDEMNIFICATION**

- 14.1 Seller will defend, hold harmless and indemnify Buyer and its customers, and their respective successors and assigns, from and against any claims of infringement (including patent, trademark, copyright, industrial design or other proprietary rights, or misuse or misappropriation of trade secrets) and resulting damages and expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) relating to the Goods or Services including any claims in circumstances where Seller has provided only part of the Goods and Services. Seller waives any claim against Buyer that any such infringement arose out of compliance with Buyer's specifications.
- 14.2 Seller will defend, hold harmless and indemnify Buyer and its customers, and their respective successors and assigns, from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with the performance of any service or work by Seller or its employees, agents, representatives and subcontractors on Buyer's or Buyer's customer's premises or the use of the property of Buyer or any customer of Buyer, except to the extent such liability arises out of the negligence or willful misconduct of Buyer or Buyer's customer.
- 14.3 Seller will defend, hold harmless and indemnify Buyer from and against all liability and expenses (including, without limitation, reasonable attorney and other professional fees and disbursements) arising from or in connection with any third party claims or demands to recover damages or other amounts in respect of personal injury or death, property damage or economic loss caused by any of the Goods or Services supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or any other legal theories), except to the extent such injury, death, damage or loss results from alteration or improper repair, maintenance or installation by any party other than Seller.

## **15 COMPLIANCE WITH LAWS**

- 15.1 Seller, and any Goods or Services supplied by Seller, shall comply with all applicable laws, rules, regulations, orders, conventions, ordinances and standards of the country (ies) of origin, sale and destination or that relate to the material sourcing, manufacture, labeling, transportation, importation, exportation, licensing, approval, performance and/or certification of the Goods or Services, including, but not limited to, those relating to environmental and sustainability matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety and motor vehicle safety. Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages, costs or expenses (including, without limitation, reasonable attorney or other professional fees and disbursements) arising from or relating to Seller's noncompliance with its obligations under this paragraph. Seller represents that: (i) neither it nor any of its subcontractors or suppliers will either engage in or permit substandard working conditions in the supply of the Goods or the Services under this Order, (ii) child labor or underage labor, as defined by applicable law, will not be utilized, (iii) it will not allow any form of forced or compulsory labor, (iv) workers, without fear of reprisal, intimidation or harassment, shall have the right to associate freely and join labor unions and workers' councils or to otherwise refrain from joining such organizations as they so choose, in accordance with applicable laws, (v) workers shall be protected against any form of harassment and discrimination in any form, including but not limited to gender, age, religion, disability and political beliefs, (vi) workers shall have a safe and healthy workplace that meets or exceeds all applicable standards for occupational health and safety, (vii) workers shall be compensated with wages and benefits that comply with applicable law, including minimum wages, overtime hours and legally mandated benefits and (viii) working hours shall comply with all applicable laws regulating hours of work.
- 15.2 Upon request, Seller shall furnish Buyer with such written verification as Buyer deems necessary to certify the origin of any ingredients or materials in the Goods. Seller shall also promptly furnish to Buyer all documents and other information requested by Buyer so that Buyer may comply in a timely manner with all applicable laws governing consumer protection, conflict minerals or similar materials or ingredients.
- 15.3 Seller shall indemnify and hold Buyer, its subsidiaries and affiliates, their respective successors, assigns, representatives, employees and agents, and the Customer harmless from and against all liabilities, claims, demands, losses, costs, damages and expenses of any kind and nature (including personal injury, property damage, consequential and special damages) arising from or as a result of Seller's failure to comply with Section 15.

## **16 INSURANCE**



16.1 Seller shall, at its own expense, maintain and carry in full force and effect: (i) property and general liability insurance, including public liability, property damage liability, product liability and contractual liability coverages; and (ii) workers' compensation and employer's liability insurance covering all employees engaged in the performance of this Order. All insurance shall be maintained in such amounts and with such deductibles as are commonly carried by prudent businesses similarly situated or as is otherwise required by applicable law. Seller's insurance shall insure against any liability for loss, injury, damage or claims caused by or arising out of or in connection with the operation of Seller's business including injury to or death of Seller's employees, agents or any other persons and damage to or destruction of public or private property. Buyer shall be named as an additional insured on the policies for such insurance and Seller shall furnish Buyer with certificates or other satisfactory proof of insurance confirming the foregoing insurance coverages within five (5) days of Buyer's request. The existence or non-existence of insurance does not release Seller of its obligations or liabilities under this Order.

## **17 SELLER'S ENTRY UPON BUYER'S OR CUSTOMER'S PREMISES**

17.1 If Seller or any of its representatives, employees, agents, subcontractors or suppliers (collectively, "Seller Parties") enter upon the premises owned or controlled by Buyer or its subsidiaries or affiliates (the "Buyer's Premises") or upon a customer's premises, in each case in connection with Seller's performance of its obligations under this Order, Seller shall: (i) indemnify and hold Buyer and the customer, and their respective representatives, employees, agents, customers, invitees, subsidiaries, affiliates, successors and assigns, harmless from and against all liabilities, demands, claims, losses, costs, damages and expenses of any kind or nature (including legal and other professional fees) by reason or on account of property damage, death and/or personal injury, arising from or as a result of Seller's performance of its obligations under this Order, which is or are occasioned by Seller Parties' actions, omissions or negligence; and (ii) ensure that Seller Parties are in compliance with all requirements of any workers' compensation legislation of the jurisdictions in which the Buyer's Premises or the customer's premises are located.

## **18 CUSTOMER TERMS**

18.1 If a customer of the Buyer directed, recommended or requested that Seller be the source from whom Buyer is to obtain the Goods and/or Services: (i) Buyer will pay Seller for the Goods and/or Services only after and to the extent of, and in proportion to, Buyer's actual receipt of payment from the customer for those goods into which the Goods and/or Services are incorporated; (ii) any lengthening of the customer's payments terms to Buyer for those goods into which the Goods and/or Services are incorporated will automatically lengthen the payment terms as between Buyer and Seller by the same amount of time; and (iii) within three (3) business days of any change in price, specifications or other terms negotiated or proposed between Seller and the customer, Seller shall notify Buyer in writing and immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.

## **19 TIME PERIOD OF ORDER**

19.1 Subject to Buyer's termination rights this Order is binding on Buyer and Seller until the expiration date or the end of the time period specified in this Order.

## **20 CONFIDENTIALITY AND NON-DISCLOSURE**

20.1 Seller shall consider and treat all Information (as hereinafter defined) as confidential and shall not disclose any Information to any other person, or use any Information itself for any purpose other than pursuant to and as required by this Order, without Buyer's prior written consent. Buyer retains all rights with respect to the Information, and Seller shall not acquire, nor attempt to obtain, any patent, trademark, copyright, license or other rights in respect of the Information. Seller shall not allow any Information to be reproduced, communicated or in any way used, in whole or in part, in connection with services or goods furnished to others, without Buyer's prior written consent. As used herein, "Information" means all drawings, reproductions, specifications, designs, engineering instructions, photographs, reproducible copy, parts, lists, plans, reports, working papers, computations and other information furnished by Buyer and shall include all terms and conditions and any other information relating to this Order.

20.2 Unless otherwise expressly stated in this Order and except as may be agreed in a prior written agreement between Buyer and Seller, no commercial, financial or technical information furnished or disclosed in any manner or at any time by Seller to Buyer shall be deemed to be secret or confidential, and Seller shall have no rights against Buyer or its customers with respect to any use or disclosure of such information.

## **21 WEBSITE TERMS AND REQUIREMENTS**

21.1 Buyer's internet website (or such other website as may be directed through links available on such website) as specified on the face of this Order ("Buyer's Website") may contain specific additional requirements for certain items covered by this Order, including labeling, packaging, shipping, delivery and quality specifications, procedures, directions and/or instructions. Any such requirements shall be deemed to form part of the Terms and this Order. Buyer may periodically update such requirements by



posting revisions thereto on Buyer's Website. In the event of any inconsistency between this Order and Buyer's Website, the terms of this Order shall prevail, unless the requirements specified on Buyer's Website expressly provide otherwise.

21.2 Buyer may modify these purchase order terms and conditions from time to time by posting revised purchase order terms and conditions to Buyer's Website. Such revised purchase order terms and conditions shall apply to all purchase orders and purchase order revisions issued on or after the effective date thereof. Seller shall review Buyer's Website periodically.

## **22 RIGHT OF BUYER TO PERFORM**

22.1 If Seller fails to perform any of its obligations under this Order, Buyer and its agents may, without limiting or affecting its other rights and remedies available hereunder or at law, but shall not be obligated to, perform such obligations without waiving or releasing Seller from such obligations. Where applicable, Buyer and its agents shall be entitled to enter upon Seller's premises to perform, or to remove any tooling and all materials necessary to perform such obligations. All costs, damages and expenses incurred directly or indirectly by Buyer in connection with the foregoing, including legal and other professional fees and Buyer's administrative time, labor and materials, shall be paid by Seller to Buyer on demand or, at Buyer's sole option, may be set off against and deducted from any amounts then owing by Buyer to Seller.

## **23 ASSIGNMENT**

23.1 Seller shall not assign or delegate its obligations under this Order or any portion hereof or work hereunder or any interest herein. Buyer shall have the right to assign this Order or its interest herein, without Seller's consent, to any of its affiliates or to any purchaser of or successor to Buyer's business.

## **24 RELATIONSHIP OF THE PARTIES**

24.1 Seller and Buyer are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does this Order grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. None of the persons engaged by Seller in the performance of its obligations under this Order shall be considered as employees of Buyer.

## **25 MODIFICATIONS**

25.1 No modification of this Order, including any waiver of or addition to any of the Terms, shall be binding upon Buyer, unless made in writing and signed by Buyer's authorized representative.

## **26 REMEDIES**

26.1 The rights and remedies reserved in this Order shall be cumulative and not alternative and may be exercised separately or together, in any order or combination, and are in addition to any other remedies provided or allowed by law, at equity or otherwise. Seller expressly acknowledges and agrees that any failure of Seller to deliver the Goods on the delivery dates and times specified in this Order will cause irreparable harm to Buyer and that Buyer shall be entitled to equitable relief, including injunction, in such event.

## **27 WAIVER**

27.1 The failure of either party to insist on performance by the other party of any Term or failure to exercise any right or remedy reserved in this Order, or either party's waiver of any breach or default hereunder by the other party shall not, thereafter, waive any other terms, conditions, rights, remedies, breaches or defaults, whether of the same or a similar type or not.

## **28 SEVERABILITY**

28.1 If any provision of this Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Order shall remain in full force and effect.

## **29 SURVIVAL**

29.1 The obligations of Seller to Buyer shall survive termination of this Order, except as otherwise expressly stated in this Order.





**30 NOTICES**

- 30.1 Except as otherwise expressly stated in this Order, any notice given or other communication sent under this Order shall be in writing and shall be properly delivered to its addressee by hand, prepaid courier, registered mail, e-mail (receipt confirmed) or facsimile (receipt confirmed) at the applicable address noted on the face of this Order. Any notice or communication given as provided herein shall be deemed to have been received at the time of its delivery if delivered by hand, on the business day following its dispatch if transmitted by courier, e-mail, or facsimile or on the third business day following its mailing if transmitted by registered mail. Either party may notify the other party, in the manner provided for herein, of any change of address, for the purpose of giving notices or sending communications under this Order.
- 30.2 Seller's failure to provide any notice, claim or other communication to Buyer in the manner and within the time periods specified in this Order shall constitute a waiver by Seller of any and all rights and remedies that otherwise would have been available to Seller upon making such notice, claim or other communication

**31 GOVERNING LAW AND JURISDICTION**

- 31.1 This Order shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Ontario and of Canada, exclusive of the choice of the law rules thereof. For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order.
- 31.2 Any litigation on contractual claims arising from this Order may be brought by Buyer in any court having jurisdiction over Seller, or, at Buyer's option, in any court having jurisdiction over the Buyer's locations specified in this Order, in which event Seller consents to jurisdiction and service process in accordance with applicable procedures. Any claim or proceeding by Seller against Buyer may be brought by Seller only in the court having jurisdiction over the location of Buyer from which this Order issued. Seller irrevocably waives and agrees not to raise any objection it might now or hereafter have to any such claim or proceeding in any such court, including any objection that the place where such court is located is an inconvenient forum or that there is any other claim or proceeding in any other place relating in whole or in part to the same subject matter.