



# Terms and Conditions of Sale

## 1. Controlling Provisions.

(a) Generally. This document is an offer or counter-offer by Osborn, LLC ("Seller"), to sell the goods and/or services that are identified in this document (the "Products") to the buyer identified in this document ("Buyer") in accordance with these Terms and Conditions of Sale ("Terms and Conditions"), it is not an acceptance of any offer made by Buyer. All sales by Seller to Buyer are subject to, and are expressly conditioned upon assent to, these Terms and Conditions. Seller hereby objects to any additional or different terms or conditions, and notifies Buyer that Seller is unwilling to sell on any terms or conditions other than these Terms and Conditions. These Terms and Conditions and the additional terms and conditions contained in or attached to this document, as supplemented by agreed upon quantities and shipping dates (collectively, the "Contract"), shall be the entire agreement between Seller and Buyer on the subject of the transactions described herein; and there are no conditions to this Contract that are not expressed herein. Buyer's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. THIS CONTRACT (INCLUDING ALL ITEMS EXPRESSLY INCORPORATED BY REFERENCE) CONSTITUTES THE FINAL EXPRESSION OF THE TERMS BETWEEN SELLER AND BUYER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY SELLER AND BUYER. Seller's sales representatives are without authority to change, modify or alter the terms of this Contract.

(b) Acceptance. Buyer shall be deemed to have made an unqualified acceptance of this offer and the terms and conditions herein on the earliest of the following to occur: (a) Seller's receipt of a copy of this Contract (or any document in which this is referenced or to which it is attached) signed by Buyer, (b) Buyer's payment of any amounts due under this Contract, (c) Buyer's delivery to Seller of any material to be furnished by Buyer, (d) Seller's delivery of the Products, (e) failure by Buyer to notify Seller to the contrary within ten days of receipt of this Contract (or any document in which this is referenced or to which it is attached) or (f) any other event constituting acceptance under applicable law.

(c) Governing Law. This Contract shall be governed by and construed according to the internal laws of the State of Wisconsin, U.S.A., including, without limitation, the Uniform Commercial Code as adopted in the State of Wisconsin, U.S.A. Neither this Contract nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale



of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin, U.S.A. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court.

(d) Severability; Waiver. The invalidity of any provision or clause of this Contract shall not affect the validity of any other provision or clause hereof. Seller reserves the right to correct clerical or similar errors relating to price or any other term shown in this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment or any right granted hereunder or the future performance of such term, covenant or condition.

(e) Compliance with Laws. Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products.

## 2. Delivery.

(a) Generally. Seller shall deliver the Products F.O.B. the shipping point. All risk of loss, damage or delay, and title to Products, shall pass from Seller to Buyer upon Seller's delivery of the Products F.O.B. the shipping point. Partial shipments shall be permitted. Buyer shall accept overrun and/or underruns not exceeding 10% of quantity ordered, to be paid for or allowed pro rata. Export shipments are all Ex-Works from point of manufacture. Buyer is solely responsible for their shipment. By placing an order, Buyer authorizes Seller to act on Buyer's behalf to engage a common carrier to deliver Buyer's order unless Buyer specifies otherwise at the time of order. Standard terms, conditions and freight allowances by carriers shall prevail on all deliveries. Materials in transit are the responsibility of Buyer and any claims regarding damaged material are Buyer's responsibility.

(b) Delivery Dates. All delivery dates are approximate. Delivery dates given by Seller are based on prompt receipt of all necessary information regarding the order. Seller will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Seller to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence.

(c) Delivery Delays. Any delay in delivery due to causes beyond Seller's reasonable control, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions, (b) failure to arrange for pickup, (c) failure to supply or approve necessary data in a timely manner, (d) requested changes or (e) failure to provide documents or materials required for Seller to effect delivery, Seller will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon Seller's demand.



(d) Claims. Claims for shortages or other errors must be made in writing to Seller within 2 days after Seller's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

(e) Orders. Buyer shall ensure that its orders are received by Seller within the minimum lead times, quantities (where applicable) and dollars (\$100 net minimum order per invoice, \$50 net minimum order if purchased via credit card) indicated on the applicable quote or other communication by the Seller. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Contract, whether or not the order or change order so states.

### 3. Prices; Taxes.

(a) Prices. Unless prices are stated on the face hereof, prices shall be the higher of Seller's most recent quote to Buyer, prevailing market price, Seller's list price or the last price charged by Seller to buyer for the Products. Unless otherwise stated on the face hereof, prices are in U.S. Dollars, F.O.B. the shipping point. Prices are subject to increase based on any event or cause that impacts the price or availability of materials or supplies, including, without limitation, foreign exchange rates, increases in raw material costs, inflation and increases in labor and other production and supply costs.

(b) Taxes. Buyer shall pay or reimburse Seller on demand for all taxes, fees and costs, including, without limitation, any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, customs agent or broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between Seller and the Buyer, in addition to the prices quoted or invoiced.

### 4. Terms of Payment.

(a) Generally. Unless otherwise stated on the face hereof, payment terms are 100% of invoice amount due 30 days after Seller's delivery.

(b) Seller's Rights. Notwithstanding the foregoing, terms of payment on all orders are subject to the approval of Seller's credit department. If Buyer does not pay Seller any amount due under this Contract or any other agreement when such amount is due or if Buyer defaults in the performance of this Contract, Seller may, without liability to Buyer and without prejudice to Seller's other lawful remedies, (i) terminate Seller's obligations under this Contract, (ii) declare immediately due and payable all Buyer's obligations to Seller, (iii) change credit terms (including, without limitation, requiring payment in advance) with respect to any further work, (iv) suspend or discontinue any further work and/or (v) repossess the Products. Buyer agrees to reimburse Seller for all costs and fees, including, without limitation, attorneys' fees and repossession fees, incurred by Seller in collecting any sums owed by Buyer to Seller. Buyer agrees to pay a late payment charge of 1.5% per month, or the maximum amount allowable by law (if lower), on all amounts not paid in full when



due, payable on Seller's demand. Buyer shall not set off amounts due to Seller against claims against Seller.

## 5. Cancellations, Changes and Returns.

(a) Cancellations. All undelivered Products may be cancelled by Buyer only upon written approval of an authorized representative of Seller. In the event of any cancellation of an order by Buyer, Buyer shall pay to Seller its reasonable costs and expenses, plus Seller's usual rate of profit for similar work.

(b) Changes. Buyer may not alter or modify its order or any part thereof without Seller's prior, written consent. Seller reserves the right to change the price, terms of payment and delivery dates for any Products affected by any alterations or modification.

(c) Returns. No Products may be returned to Seller without its prior written authorization, and Products may be returned only on the terms or conditions specified in such authorization. Returned Products must be of current manufacture, unused, in resalable condition and securely packed to reach Seller without damage. Any cost incurred by Seller to put product in first class condition will be charged to Buyer. All Product returned to Seller shall be subject to a 20% restocking charge plus the costs of freight, packaging, insurance and any import or export costs. Returns will not be accepted after 90 days from the date of original purchase. No returns will be accepted for non-standard products (i.e. specials) unless covered under the Limited Warranty provisions outlined within section 6 below.

## 6. Limited Warranty.

(a) Limited Warranty. Seller warrants to Buyer that its Products will be free from material defects in workmanship and materials under normal use and service for a period of 90 days from the date of Seller's delivery of Products (the "Warranty Period"). There is NO WARRANTY in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow Seller's instructions or improper installation, storage or maintenance. This warranty does not cover parts furnished but not produced or manufactured by Seller, and Seller's sole obligation with respect to such parts shall be limited to assigning or transferring to Buyer any written warranty extended to Seller by the manufacturer of such parts to the extent such warranty may reasonably be assigned or transferred. However, Seller does not adopt, guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer.

(b) Remedy. Seller's sole and exclusive obligation under this warranty (and Buyer's sole and exclusive remedy) shall be, upon prompt written notice by Buyer during the Warranty Period of any breach, to either, at Seller's option, repair or replace without charge, F.O.B. Seller's facility, any defective Product or part thereof expressly warranted herein by Seller against defects and found by



Seller in its sole discretion to be defective and covered by this warranty or credit Buyer for the purchase price paid for such Product or part. SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, WITHOUT LIMITATION, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER'S ACTS OR OMISSIONS OR OTHERWISE. This warranty covers only replacement or repair of defective Products or parts thereof at Seller's facility and does not include the cost of field service travel and living expenses, labor, inspection, removal or installation of new Products or parts or normal maintenance.

(c) LIMITATION ON DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER DAMAGES. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS CONTRACT SHALL BE LIMITED TO THE MONIES PAID TO SELLER FOR THAT DEFECTIVE PRODUCT.

(d) No Waiver or Additional Expenses. Any assistance Seller provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty. Seller will not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for those incurred with Seller's prior written permission.

## 7. DISCLAIMER OF OTHER WARRANTIES.

SELLER AND BUYER AGREE THAT THE EXPRESS WARRANTIES IN THE PRECEDING SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith.

## 8. Safety Warning.

Buffing wheels, compounds, abrasives and industrial brushes are dangerous if used improperly. Please comply with all safety regulations set by the AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) B165.1 and Z87.1, along with the OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA), covering eye, face and body protection, ventilation and wheel speeds, safety guards, flanges, mounting and operating procedures.

## 9. Engineering Data.

[osborn.com](http://osborn.com)



All engineering data, design information, concepts and engineering and shop drawings used in the completion of this order are and shall remain Seller's property. Buyer shall not copy, reproduce, distribute, publish or communicate to any third party such data without the prior written permission of an authorized representative of Seller. Seller hereby gives its permission to Buyer to distribute product data or operation and maintenance information to the end user.

## 10. Patent Infringement and Defects in Buyer's Specifications.

Orders manufactured to Buyer's specifications, drawings, designs or descriptions are executed only with the understanding that Buyer will indemnify and hold harmless Seller from any and all damages sustained by Seller, including, without limitation, reasonable attorneys' fees, resulting from any action or threatened action against Seller for (a) infringement of the patents or proprietary rights of any other person, or (b) injury to person or property, including death, relating to defects in Buyer's specifications, drawings, designs or descriptions.

## 11. Indemnification and Insurance.

(a) Indemnification. Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers ("Seller's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, losses, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs ("Damages"), incurred by or against Seller or any of Seller's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (i) misrepresentations, breach of the warranties, representations, covenants or agreements contained in this Contract or any law by Buyer or any of Buyer's shareholders, members, directors, managers, officers, employees, affiliates, representatives, agents, successors or assigns ("Buyer's Parties"), or (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties, or (iii) losses, damages or injuries caused by Buyer's products, Buyer's specifications, designs, approvals or instructions provided to Seller, or due to improper application or use of the Products or otherwise. Prior to settling any claim, Buyer will give Seller an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Seller's written consent. In the event of any recall affecting the Products, Seller shall have the right to control the recall process and Buyer shall fully cooperate with Seller in connection with the recall.

(b) Insurance. Buyer shall maintain and have in effect at all times during this Contract, and for a period of three years thereafter, Commercial General Liability Insurance, which includes (without limitation) coverage for business automobile, transit and other transportation liability, bodily injury liability, personal injury liability, property damage liability, theft, advertising injury liability, medical payments, products liability and products-completed and completed operations liability coverage,



Workers' Compensation Insurance and Contractual Liability Insurance incorporated in Buyer's Commercial General Liability Insurance policy covering the defense and indemnification agreement and other obligations of Buyer under this Contract.

## 12. Confidential Information.

Buyer acknowledges that all trade secrets, designs, specifications and other Confidential Information (as defined below) which may be disclosed to it by Seller shall at all times, both during and after expiration or termination of this Contract for any reason, remain the exclusive property of Seller and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by Seller to Buyer orally or in writing, or acquired by Buyer through observation, regarding Seller's products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usages and requirements, financial information, business plans, strategies and future business relationships, with the exception of such information which (i) was already part of the public domain at the time of the disclosure by Seller; (ii) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); (iii) was in Buyer's possession prior to the disclosure by Seller and was not acquired, directly or indirectly, from Seller or from a third party who was under a continuing obligation of confidence to Seller; or (iv) is received (after the disclosure by Seller) by Buyer from a third party who did not require Buyer to hold it in confidence and did not acquire it directly or indirectly from Seller under a continuing obligation of confidence. Except as necessary to perform its duties under this Contract, Buyer shall not use or disclose any of such Confidential Information, but shall use the greater of the degree of care required by this Contract or the same degree of care given its own trades secrets and confidential information. Upon expiration or termination of this Contract for any reason, Buyer shall, within 15 days, surrender to Seller all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of Seller's property. Buyer shall be permitted to destroy rather than return all analyses, extracts and summaries prepared by Buyer which contain Confidential Information, and such destruction shall be certified in writing to Seller by an authorized officer of Buyer who has supervised such destruction. Nothing in this Contract shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Seller with broader protection than that provided herein.

## 13. Assignment.

Neither party shall assign or transfer this Contract or any interest or duty of performance herein without the prior written consent of the other party; provided, however, that Seller may assign, without Buyer's consent, this Contract and its interest herein to any affiliate or to any entity succeeding to Seller's business and/or perform through subcontractors. Subject to the foregoing,



these terms and conditions shall be binding on and inure to the benefit of the parties and their successors and assigns.

#### 14. Independent Contractor.

Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of Seller. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on Seller's behalf.

#### 15. Force Majeure.

Seller shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Seller's available supply or any other cause beyond Seller's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Seller may, at its option and without liability, prorate its deliveries, cancel all or any portion of this Contract and/or extend any date upon which performance is due hereunder.

#### 16. Survival.

The provisions in sections 1, 4, 9, 10, 11, 12 and 16 and the warranty and damage limitations in sections 6 and 7, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of Seller's remedies herein are cumulative and not exclusive of any other remedies available to Seller at law, by contract or in equity.

Version 7-2018

## Terms and Conditions of Purchase

### 1. Controlling Provisions.

(a) Generally. The terms and conditions of this document, including the provisions on the face of any purchase order in which it is referenced or to which it is attached (the „Contract“), govern the parties' duties, obligations and relationship with respect to the sale by the vendor described herein („Seller“) and the purchase, acceptance and use by Osborn, LLC („Buyer“), of the goods and/or services described herein (the „Products“). This Contract constitutes an offer by Buyer to buy the Products





from Seller in accordance with the terms contained herein. If this document is deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained herein. Seller's acceptance of this offer is limited to the terms, covenants and conditions herein. Buyer hereby objects to and rejects any additional, different or varying terms proposed by Seller, except additional warranties by Seller, regardless of whether such terms would materially alter these terms and conditions. Seller's proposal of additional or different terms shall not operate as a rejection of Buyer's terms unless such variances are in the description, quantity, price, or place or date of delivery of the Products, and Buyer's terms shall be deemed accepted without said additional or different terms. THIS CONTRACT CONSTITUTES THE FINAL WRITTEN EXPRESSION OF THE TERMS BETWEEN BUYER AND SELLER REGARDING THE PRODUCTS AND IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS BETWEEN THE PARTIES WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY BUYER, EXPRESSLY STATING BUYER'S INTENT TO MODIFY THESE TERMS AND CONDITIONS.

(b) Acceptance. Seller shall be deemed to have made an unqualified acceptance of this Contract on the earliest of the following to occur: (a) Buyer's receipt of a copy of this Contract (or any document in which this is referenced or to which it is attached) signed by Seller, (b) Seller's acknowledgment of these terms and conditions or any purchase order submitted by Buyer from time to time, (c) Seller's commencement of manufacture or delivery of the Products, (d) Seller's acceptance of any payment from Buyer, (e) Seller's failure to object to these terms and conditions within ten days of receipt of this Contract (or any document in which this is referenced or to which it is attached) or (f) any other event constituting acceptance under applicable law.

(c) Governing Law. This Contract shall be governed by and construed according to the internal laws of the State of Wisconsin, U.S.A., including, without limitation, the Uniform Commercial Code as adopted in the State of Wisconsin, U.S.A. This Contract and purchases hereunder shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin, U.S.A. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court.

(d) Severability; Waiver. The invalidity or unenforceability of any term or condition of this Contract shall not affect the validity or enforceability of the remainder of this Contract. Buyer reserves the right to correct clerical or similar errors relating to any terms of this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of such term, covenant or condition.



## 2. Termination, Suspension or Modifications of Purchase Order.

(a) Termination and Suspension. Buyer may suspend or terminate this Contract, at any time, for its convenience and in whole or in part, by any reasonable manner. If Buyer terminates this Contract for its convenience, Seller's sole claim shall be for the costs it reasonably incurred in the performance of this Contract prior to such termination, with due allowance for the salvage value of all Products after Buyer has had full opportunity to recommend disposition and audit Seller's costs. If Buyer suspends this Contract, Seller shall promptly suspend further performance of the Contract to the extent specified and during the period of such suspension shall properly care for and protect all work in progress and materials Seller has on hand for performance of the Contract. Buyer may at any time withdraw the suspension of performance to Seller and Seller shall resume diligent performance of the work. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Contract price, Seller shall promptly submit to Buyer a written claim for such modification. Seller's claim shall substantiate Seller's increased costs with invoices and other documents satisfactory to Buyer. Upon Buyer's verification and approval of such additional costs, Buyer and Seller shall agree upon an adjustment in the Contract price based upon such costs as full settlement to Seller for the suspension and withdrawal of suspension. IN NO EVENT SHALL SELLER BE ENTITLED TO ANY PROSPECTIVE PROFITS OR ANY DAMAGES DUE TO TERMINATION, SUSPENSION OR WITHDRAWALS OF SUSPENSION.

(b) Termination for Cause. If Seller is adjudged bankrupt, is insolvent or makes a general assignment for the benefit of its creditors, violates any of the laws or obligations identified in section 9 below, or if Seller does not correct any other failure of Seller to comply with this Contract within ten days after Buyer notifies Seller in writing of such failure, the Buyer may terminate this Contract by written notice to Seller. In the event of such termination, Buyer may complete the performance of this Contract by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Any amounts due Seller for Products delivered by Seller in full compliance with the terms of this Contract prior to such termination shall be subject to setoff by Buyer for Buyer's additional costs of completing the Contract and other damages incurred by Buyer as the result of Seller's default.

(c) Modification. Notwithstanding section 1 above, Buyer may by written supplement to this Contract change the drawings, designs or specifications for Products or otherwise change the scope of work covered by any order. If such change would affect the price or delivery date for such Products, Buyer and Seller shall agree in writing upon an equitable adjustment to reflect the effect of such change. Seller shall not suspend performance of this Contract while Buyer and Seller are in the process of making such changes and related adjustments. No substitutions shall be made in this Contract without Buyer's prior written authorization. Any claim by Seller for an adjustment pursuant to this section shall be deemed to have been waived unless made in writing within 30 days from the date Buyer notifies Seller of the suspension, withdrawal of suspension or modification.



### 3. Delivery.

(a) Generally. Unless otherwise specified on the face of this Contract, Seller shall deliver the Products F.O.B. the facility named by Buyer. Seller shall pack, mark and ship Products in accordance with Buyer's specifications from time to time, including, without limitation, any temperature specifications. Seller shall package Products so as to prevent damage or deterioration and shall comply with all applicable packaging laws. Seller shall include with each shipment such documents as Buyer may require from time to time, including, without limitation, a packing slip showing Buyer's purchase order number, item numbers and sufficient other particulars to identify the Products, certificates of analysis and a Bill of Lading showing quantities delivered by lot number (collectively, the „Delivery Documents“). Buyer's count shall be accepted as final on all shipments not accompanied by packing lists. Buyer will not pay any charges for any containers, packaging, boxing, crating, marking, delivery, transportation, storage or other charges unless otherwise specified herein, and Seller will pay all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet delivery dates due to its own acts or omissions. Buyer shall have the right at any time to specify the carrier and/or the method of transportation to be employed in conveying the Products, upon proper adjustment being made to cover any difference in transportation cost agreed upon herein. Deliveries are to be made only in quantities and at times specified in schedules furnished by Buyer. Buyer may from time to time change delivery schedules. Any forecasts provided by Buyer are estimates only and are nonbinding. Seller agrees to supply Buyer's requirements for Products; provided, however, that nothing herein shall be deemed to restrict Buyer from procuring Products from alternate sources. Time is of the essence with respect to delivery of Products. Seller shall immediately notify Buyer of any actual or potential delivery delays. Title to and risk of loss of Products shall remain with Seller until delivery to the F.O.B point. Buyer may from time to time change delivery schedules.

(b) Release Authorizations. Where deliveries are to be made in accordance with Buyer's written releases, notwithstanding any quantities specified on the face hereof, Seller shall not produce any Products covered by this order, or procure materials required therefor, or ship any Products to Buyer, except to the extent authorized by such written releases. Neither acceptance of Products nor payment therefor shall constitute a waiver of this provision.

### 4. Prices; Payment.

(a) Prices. If a price is not stated on the face of this order, the Products shall be billed at the price last quoted or the prevailing market price, whichever is lower. This order must not be filled at a higher price than last quoted or charged without Buyer's prior written authorization. Prices shall not increase without Buyer's prior written consent, which Buyer may withhold in its sole discretion. Seller represents and warrants that the prices are, and will remain, no less favorable to Buyer than any price which Seller presently, or in the future, offers to any other customer for the same or



substantially similar goods and/or services for substantially similar quantities. If Seller offers a lower price for the same or substantially similar goods and/or services to any other customer during the term of this order, then Seller will immediately offer Buyer the same price as offered to such other customer.

(b) Payment. Buyer's account with Seller shall be paid within 90 days after receipt of invoice or shipment, whichever is received later, except where cash discounts apply or other terms are specified and specifically agreed to in writing by Buyer. Buyer's obligation to pay within such 90-day period is subject to Buyer's receipt of the Delivery Documents. Buyer reserves the right of setoff of any amounts due Seller on this Contract against any amount due Buyer from Seller on any transaction. Buyer's acceptance of or payment for the Products or any other action or inaction shall neither (a) relieve Seller from any of its obligations and warranties hereunder nor (b) constitute a waiver of Buyer's rights and claims hereunder.

## 5. Rejection.

All Products are subject to Buyer's inspection during manufacture and/or after delivery. Buyer shall have the right to reject Products within 45 business days from the date of delivery if any of such Products do not meet the quality standards furnished or adopted by Buyer. If Buyer rejects any Products, Seller shall, within 20 working days from the date of rejection, at Buyer's option, replace such Products or provide Buyer with full credit therefor. Alternatively, Buyer may replace the Products and invoice Seller for the additional costs Buyer incurs. Any Products rejected by Buyer shall be held at Seller's risk and subject to Seller's instructions or, at Buyer's option, returned at Seller's expense. Seller shall bear all shipping costs, the risk of in-transit loss and damage for replacement Products.

## 6. Seller's Warranties.

Seller expressly warrants to Buyer, Buyer's customer and to the ultimate user that (a) the Products (including Products sold to Buyer but manufactured by others) and all material, packaging and work covered by this Contract will (i) conform to the drawings, specifications, samples or other descriptions furnished or adopted by Buyer, (ii) conform to all representations of and specifications provided by Seller, (iii) meet or exceed the quality standards furnished or adopted by Buyer, (iv) be merchantable, of good material and workmanship and fit and sufficient for the purposes intended and (v) be new, free from defects in material and workmanship; (b) the use and/or sale, alone or in combination, of the Products will not infringe or violate any United States or foreign letters patent, or any right in or to any patented invention or idea, or a trademark, copyright or other intellectual property right; (c) the Products and their production, storage, pricing, delivery and sale hereunder are in compliance with foreign, federal, state and local laws applicable thereto, including, without limitation, all packaging and labeling laws; (d) without limiting the generality of section 6(c), the Products, and all of their ingredients, elements and components, fully and completely comply with



and satisfy the requirements of all environmental or health and safety related laws, regulations, treaties, ordinances, and/or rules, whether international, national, state or local, including, without limitation, the Montreal Protocol, REACH (of the European Union), RoHS (of the European Union) and Title VI of the Clean Air Act, 42 U.S.C. 7401 et seq.; and (e) Seller is conveying good title to the Products, free and clear of any liens or encumbrances. Seller acknowledges that it has knowledge of Buyer's intended use and warrants that all Products that have been manufactured by Seller based on Buyer's use and will be fit and sufficient for the particular purposes intended by Buyer. Any Products not in accordance with the foregoing warranties or any special warranty shall be deemed to be defective and may be rejected by Buyer. Buyer's approval of Seller's specifications shall not relieve Seller of any of its warranty obligations. Seller will maintain a quality assurance system which is adequate in Buyer's judgment to detect and prevent shipment of nonconforming Products. In the event of any recall affecting the Products, Seller shall indemnify Buyer and the Buyer Parties (as defined below) in accordance with section 9. Buyer shall have the right to control the recall process and Seller shall fully cooperate with Buyer in connection with the recall.

## 7. Breach of Warranty.

If Seller breaches any of its warranties, Seller shall be liable for all and indemnify Buyer and the Buyer Parties from and against all Damages (as defined below) incurred by them, including, without limitation, the purchase price of the Products, delivery costs, replacement and cover costs, lost profits, consequential and incidental damages. Seller acknowledges that, if Seller's breach causes Buyer to deliver products to its customers either late or below Buyer's standards, Buyer will incur lost profits and other damages for which Seller is liable. Without limiting the foregoing, Seller shall promptly and at its sole cost replace any Products failing to conform with the warranties set forth in this Contract. Replacement Products shall be subject to the same warranty as provided above. If Product is held to constitute an infringement of a third party right, Seller shall, at its expense, either procure for Buyer the right to use said Product or replace same with a substantially equal but not infringing Product, or modify it so that it becomes substantially equal but not infringing.

## 8. Buyer's Information, Property and Intellectual Property.

(a) Buyer's Information. If any Products supplied under this Contract are made according to Buyer's manufacturing information, such information shall be used only to manufacture Products to Buyer's orders. Seller agrees that Buyer shall at all times retain title to such manufacturing information and Seller agrees to maintain it in confidence. Upon Buyer's request, Seller shall return to Buyer all such manufacturing information without retaining any copies or embodiments thereof.

(b) Buyer Property. Unless otherwise agreed in writing, Seller at its cost shall supply all materials, equipment, tools and facilities required to perform under this Contract. Any materials, equipment, tools, dies or other properties furnished by Buyer or paid for by Buyer, and any design drawings relating to or used in the manufacture of such properties, shall remain Buyer's property. Any Buyer



property shall be used only for performance under this Contract and, on demand, must be returned to Buyer in accordance with Buyer's instructions without charge. Seller agrees, as a condition of this Contract, that it will: (i) properly mark/label, identify and segregate any and all Buyer property in such fashion as to clearly identify such items as being the property of Buyer, (ii) prevent the commingling of said Buyer property with other material in Seller's possession except in accordance with applicable Buyer specifications or Buyer's written approval and (iii) assume responsibility for all taxes and risk of loss or damage with respect to said Buyer property at all times until such property is returned to Buyer.

(c) Intellectual Property. Whenever requested by Buyer to do so, Seller will place on the Products, in the manner specified by Buyer, such trademarks or other identifying marks as Buyer may specify. Seller warrants and agrees that Buyer's identifying marks shall be used only on Products supplied to Buyer and in the manner and subject to the restrictions imposed by Buyer. All of Buyer's Intellectual Property Rights (as defined below) are and shall remain Buyer's sole property, and Seller agrees not to take or permit any action contradicting Buyer's rights thereto. „Intellectual Property Rights“ include, without limitation, any copyright, patent, registered or unregistered design, logo, trademark, trade dress, trade name or other designation, translation of trade name into another language, and any similar rights or applications for rights in any of the foregoing in any part of the world owned or used by Buyer or any of its affiliates, and any goodwill relating thereto. Buyer's rights shall be enforceable by injunctive relief and/or a decree of specific performance. Seller does not acquire any rights, title or interest in any of the trademarks or trade names of Buyer by virtue of this Contract, and Seller shall not use or in any way refer to Buyer's trademarks or trade names without Buyer's prior written permission. Nothing herein shall limit the statutory or common law of torts or trade secrets where it provides Buyer with broader rights.

## 9. International Compliance.

(a) Economic Sanctions & Export Controls. Seller is not (i) a Person on the list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control („OFAC“) or any other denied party lists maintained by the U.S. Government, the European Union („EU“) or other jurisdictions where Buyer operates; (ii) a Person organized or resident in a country or territory subject to comprehensive OFAC or EU sanctions; (iii) is a Person who is otherwise the target of economic sanctions or export control laws such that Buyer cannot deal or otherwise engage in business transactions with Seller; or (iv) owned or controlled by (including by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any of the foregoing Persons such that the entry into, or performance under, this Contract or any document would be prohibited by U.S., EU, or other law.

(b) Money Laundering. Seller is in compliance with all laws related to terrorism or money laundering including: (i) all applicable requirements of the Currency and Foreign Transactions Reporting Act of 1970 (31 U.S.C. 5311 et. seq., (the Bank Secrecy Act), as amended by Title III of the USA Patriot



Act; (ii) the Trading with the Enemy Act of 1917; (iii) Executive Order No. 13224 on Terrorist Financing, 66 Fed. Reg. 49,079 (Sept. 24, 2001); or any other U.S., EU, or other laws relating to anti-money laundering.

(c) Anti-Corruption. Seller will comply with the U.S. Foreign Corrupt Practices Act of 1979, the United Kingdom Bribery Act of 2010 and any other similar „anti-bribery“ laws and regulations, and in particular (but without limitation) will not, directly or indirectly, in the name, on behalf of or for the benefit of Buyer or its affiliates, offer, promise or authorize to pay any compensation, or give anything of value to, any official, agent or employee of any government or governmental agency, or to any political party or any officer, employee or agent of any political party. Seller will require each of its directors, officers, employees, sub-Sellers and agents to comply with the provisions of this paragraph. Seller shall permit, upon the request of and at the sole discretion of Buyer, audits by independent auditors acceptable to Buyer, and agree that such auditors shall have full and unrestricted access to all records related to the work performed for, or services or equipment provided to, Buyer, and to report any violation of any of the U.S. Foreign Corrupt Practices Act of 1979, the United Kingdom Bribery Act of 2010 or any other similar „anti-bribery“ laws and regulations, with respect to: (a) the effectiveness of existing compliance programs and codes of conduct; (b) the origin and legitimacy of any funds paid to Buyer; (c) its books, records and accounts, or those of any of its subsidiaries, joint ventures or affiliates, related to work performed for, or services or equipment provided to, Buyer; (d) all disbursements made for or on behalf of Buyer; and (e) all funds received from Buyer in connection with work performed for, or services or equipment provided to, Buyer.

(d) Conflict Minerals. Seller shall: (i) affirmatively disclose to Buyer any Conflict Minerals used in the productions of any Products purchased by Buyer under this Contract; (ii) submit to Buyer any reports relating to Conflict Minerals filed by Seller with the U.S. Securities and Exchange Commission pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 („Dodd-Frank“); and (iii) provide Buyer with a description of measures taken by Seller to assure the appropriate sourcing and chain of custody for such materials. For the purposes of this Contract, term „Conflict Minerals“ shall have the meaning ascribed to it under Dodd-Frank and shall include, without limitation, columbite-tantalite (coltan), cassiterite (tin), gold, wolframite (tungsten), or their derivatives, or any other mineral or its derivatives determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of the Congo.

(e) Anti-Slavery & Human Trafficking. Seller shall not: (i) use forced, bonded, indentured labor, child labor, or involuntary prison labor in manufacturing any Products purchased by Buyer; (ii) import or cause such Products to be imported into the Customs Territory of the United States in violation of 19 U.S.C. § 1307 or other applicable laws; (iii) or engage in any form of human slavery or trafficking including, without limitation, transporting, harboring, recruiting or transferring or receiving vulnerable persons by means of threat, force, coercion, abduction, or fraud for the purpose of exploitation. Seller shall provide Buyer with a description of the measures taken by Seller to prevent the use of



coerced labor, slavery, and human trafficking in its Products and supply chain, including any information necessary for Buyer to meet supply due diligence and disclosure requirements imposed under the California Transparency in Supply Chains Act (Calif. Civil Code § 1714.43), the United Kingdom Modern Slavery Act of 2015, and other applicable Anti-Slavery and Human Trafficking laws.

## 10. Indemnification and Insurance.

(a) Indemnification. Seller hereby releases and agrees to promptly defend, indemnify and hold Buyer and its shareholders, directors, officers, agents, employees, affiliates, customers, successors and assigns (collectively „Buyer Parties“) harmless from and against all liabilities, losses, claims, court costs, incidental and consequential damages, attorneys' fees and other expenses arising from any loss, damage or injury (including death) to any person or property („Damages“) in any way relating to the Products or: (a) any alleged defects in the Products; (b) any inadequate disclosures, labels, packaging, warnings or instructions; (c) the alleged violation of any statute, ordinance or other law, order, rule or regulation, including those identified in section 9 above; (d) any alleged unfair competition resulting from similarity of design, trademark, use or appearance of the Products; (e) bodily injuries, deaths or property damage caused by negligent or wrongful act or omission of Seller, or any employee or agent of Seller; (f) any breach of warranty set forth herein or any special warranty; and (g) any recalls involving Products. The provisions of this section 10 shall be effective whether or not such loss, damage or injury was proximately caused by the sole or partial negligent acts or omissions of Buyer or any Buyer Parties. Buyer and the Buyer Parties, at their option, may be represented by and actively participate through their own counsel in any such suit or proceeding, and Seller shall pay the costs of such representation and participation. IN NO EVENT SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN RELATION TO THESE TERMS AND CONDITIONS OR THE PARTIES' RELATIONSHIP, AND SELLER AGREES TO INDEMNIFY AND HOLD BUYER HARMLESS THEREFROM.

(b) Insurance. Seller shall, at its own expense, maintain in effect insurance with respect to its performance hereunder and the Products with such coverages and in such amounts as Buyer may require in writing from time to time and, at a minimum, as may be commercially reasonable. All insurance policies shall be issued by insurance companies reasonably acceptable to Buyer. Seller shall cause the issuer of each insurance policy to issue a certificate of insurance naming Buyer as an additional named insured, and containing an agreement by the insured that the policy shall not be terminated or modified without at least 30 days' prior written notice to Buyer, and Seller shall, at Buyer's request, deliver each such certificate to Buyer. Seller's compliance with these insurance requirements shall not relieve Seller from liability under these indemnification provisions. Seller shall indemnify Buyer and the Buyer Parties for any loss suffered due to Seller's failure to obtain or maintain the insurance required hereunder.





## 11. Assignment.

Neither party shall assign or transfer this Contract or any interest or duty of performance herein without the prior written consent of the other party; provided, however, that Buyer may assign, without Seller's consent, this Contract and its interest herein to any affiliate or to any entity succeeding to Buyer's business. Subject to the foregoing, these terms and conditions shall be binding on and inure to the benefit of the parties and their successors and assigns.

## 12. Independent Contractor.

Seller is and shall remain an independent contractor and neither Seller nor any of its employees or agents shall be considered an employee of Buyer. Neither Seller nor any of its employees or agents are authorized to incur any obligations or make any promises or representations on Buyer's behalf.

## 13. Force Majeure.

Buyer shall not be responsible for default hereunder where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, labor disturbance, operation of statutes, laws, rules or rulings of any court or government, the imposition of embargos, economic sanctions, or other restrictive trade measures, or any other cause beyond Buyer's control.

## 14. Survival.

The provisions of sections 1, 6, 7, 8, 9, 10, 14 and 15, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of this Contract for any reason.

## 15. Buyer's Remedies Cumulative.

Buyer's remedies specified herein are cumulative and not exclusive of any other remedies available to Buyer.

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