



Revision 003

## GENERAL TERMS & CONDITIONS OF PURCHASE

### 1. ACCEPTANCE OF PURCHASE ORDER, ENTIRE AGREEMENT, MODIFICATIONS

This Order is for the purchase by Buyer of the goods and services (hereinafter "articles") from the Seller, all as described on the face of this Order. Acceptance of this Order shall be limited to the terms and conditions contained herein and incorporated herein by reference. This Order shall be deemed accepted upon the first to occur of Seller's return of the acknowledgment copy of this Order, agreement by Seller to furnish the articles hereby ordered or the commencement of performance by Seller. Buyer rejects any additional or inconsistent terms and conditions offered by Seller at any time irrespective of Buyer's acceptance of or payment for Seller's articles or services. In the event that this Order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. This Order takes precedence over any document or communication received from Seller. These terms and conditions constitute the entire agreement between the parties and no change to or modification of this Order shall be binding upon Buyer unless signed by an authorized representative of Buyer's procurement or purchasing office at Buyer's place of business issuing this Order. Wherever the term "written consent of Buyer" is set out in this Order it shall mean the written consent of an authorized representative of Buyer's procurement or purchasing office at Buyer's place of business issuing this Order. This Order uses acronyms. The Buyer's definition of these acronyms is the governing interpretation and these definitions are available on request.

### 2. TESTS AND REPORTS

(a) Test reports and/or certification for articles to be supplied under this Order shall be forwarded to Buyer's facility identified on the face of this Order and copies shall be retained by Seller for a period not less than seven (7) years after shipment of articles.

(b) For chemical and physical test reports required under this Order, forward two (2) copies to the address indicated on the face of this Order. One (1) copy shall accompany each shipment.

(c) Seller agrees to furnish written reports regarding schedule compliance at request of Buyer.

### **3. SHIPPING INSTRUCTIONS**

(a) Seller shall be responsible for the proper packaging of articles supplied hereunder.

(b) Unless otherwise directed, all articles shipped in one day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in this Order.

(c) For articles purchased F.O.B. (Incoterms 2000) origin, Seller shall not insure or declare a value except when transportation rates are based on "released value", in which instance Seller shall annotate on the bill of lading the lowest released value provided in applicable tariffs.

(d) Seller shall at all times comply with Buyer's written shipping instructions.

(e) Seller shall submit all required shipping papers to Buyer prior to final payment.

### **4. DELIVERY; NOTICE OF DELAY; ACCEPTANCE & REJECTION**

(a) Title to articles shall pass to Buyer on the earlier to occur of (i) when payment is made, pro rata if partial payments are made, regardless of the date of delivery; and (ii) on delivery even if payment has not been made.

(b) Time is of the essence and no acts of Buyer, including without limitation, modifications of this Order or acceptance of late deliveries, shall constitute a waiver of this requirement. Buyer reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's Order, in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.

(c) Seller shall notify Buyer in writing immediately of any actual or potential delay or threat of delay to the timely performance of this Order, including notice to Seller of any actual or potential labor dispute which delays or threatens to delay the timely performance of this Order.

(d) Any articles which are nonconforming as to the quality or quantity or the delivery schedule or not in compliance with Section 14 – *Warranty* shall constitute a breach of this Order and Buyer shall have the right to reject such articles, in whole or in part, and notify Seller thereof. In the event of such a tender, Buyer shall be entitled to all remedies as provided by law, and in addition thereto shall have the right to do any or all of the following: (i) to hold such nonconforming articles for a reasonable period of time at Seller's risk and expense pending a determination to accept or reject any or all thereof; (ii) to return such nonconforming articles to

Seller at Buyer's election and at Seller's risk and expense for replacement or correction; (iii) to accept such nonconforming articles subject to an equitable price reduction; (iv) to replace or correct such nonconforming articles and charge to Seller the cost occasioned to Buyer thereby; (v) to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by Buyer as a result of such holding, return, removal and replacement, correction, reductions, or rejections of nonconforming goods, or (vi) to terminate this Order as provided in Section 6 hereof.

(e) Seller agrees to indemnify and save harmless Buyer from any loss, penalty or damages resulting from Seller's refusal, or failure, to make deliveries as stated on the face hereof. If delivery is not made within such time and Buyer deems it necessary to call upon Seller for express shipments, Seller shall bear the difference between freight and express rates.

(f) Goods must be delivered in the manner and within the time specified on this order and Vendor shall indemnify Purchaser from and against any cost arising in connection therewith. Liquidated damages at the rate of one percent (1%) of the value of the goods delayed per each week the goods are delayed shall be payable in addition to any reasonable cost incurred up to the value of the goods so delayed.

## **5. TERMINATION FOR CONVENIENCE**

(a) Notwithstanding anything contained in this Order, Buyer may at any time terminate this Order (save and except any term hereof relating to the retention by the Seller of any reports, documents, or other material) in whole or in part by written notice stating the extent and effective date of such termination. Upon notice of termination, Seller shall cease work (including the manufacturing and /or procuring of materials for the fulfillment of this Order) in accordance with and to the extent specified in such notice. Buyer may, at any time or from time to time, give one or more additional notices with respect to any or all parts of the work which remain to be completed after the giving of any previous notice or notices.

(b) In the event of any notice being given under the provisions of this Section 5: (i) all work completed by the Seller hereunder before the giving of such notice, and all work completed thereafter pursuant to such notice, shall be paid for (subject to acceptance by Buyer in accordance with the provisions of this Order) on the basis provided in this Order; and (ii) in respect of work in process hereunder before giving of such notice, and **not** completed thereafter pursuant to such notice, Seller shall be entitled to be reimbursed the actual cost to Seller as hereinafter defined of such completed work and to receive in addition an amount representing a fair and reasonable profit in respect of the work done thereon.

(c) It is expressly agreed that no reimbursement shall be made for articles or materials, whether or not in the course of manufacture or manufacturing which have been or may be rejected after inspection as not complying with the terms and conditions of this Order including, without limitation, the specifications and the specific performance requirements; and no reimbursement shall be made of expenditures incurred by Seller in respect of deliveries of which Seller may be in arrears at the time the said notice is given. In addition, Buyer is not responsible for and shall not reimburse Seller for costs incurred in respect of work that was not done pursuant to firm Orders issued by Buyer.

(d) In no case shall Seller be entitled to be reimbursed any amount, which taken together with any amounts paid or due or becoming due to Seller under this Order, shall exceed the total amount payable for the work to be performed under this Order.

(e) Upon reimbursement being made to Seller as herein provided, title to the articles, part, plant, equipment, and/or other work in process in respect of which such reimbursement is made shall pass to and vest in the Buyer unless already so vested under any other provision hereof (the Seller hereby agreeing to execute and deliver all requisite instruments by way of further assurance) and such materials, parts, plant, equipment and/or work in process shall be delivered to the order of the Buyer, but the materials thus taken over will in no case be in excess of what would have been required for performing this Order in full if no notice had been given under the provisions hereof.

**(f) The Seller shall have no claim for damages, compensation, loss of profits, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or notice given by Buyer under or pursuant to the provisions of this Section 5 except as and to the extent expressly provided in this Section 5.**

(g) Buyer shall have the right to audit all elements of any termination claim howsoever termination occurs and Seller shall make available to Buyer or Buyer's representative on request all books, records and papers relating thereto.

(h) As far as practicable Seller shall place any purchase orders and subcontracts necessary for the performance of the work on terms that will enable the Seller to terminate the same upon conditions and terms similar in effect to those provided herein and generally Seller shall cooperate with Buyer and do everything reasonably within its power at all times to minimize and reduce the amount of Buyer's obligations in the event of termination of this Order as hereinbefore provided.

(i) Seller's obligations under the warranty, patent, and confidentiality provisions of this Order shall survive such termination.

## **6. BUYER'S ASSISTANCE; TERMINATION FOR DEFAULT**

(a) In the event Buyer reasonably believes Seller to be in default, or unable to meet any delivery date or specification herein, Buyer may, in its sole discretion, provide representatives at Seller's facility to consult with, advise and assist Seller in fulfilling its commitments under this Order; provided however, Buyer's activities shall not relieve Seller of its obligations hereunder. Seller shall pay Buyer's reasonable costs and expenses associated with such activities.

(b) Buyer may terminate this Order, or work under this Order in whole or in part, for the breach by Seller of one or more of its terms and Seller's failure to fully cure such breach within ten (10) calendar days following Buyer's issuance of written notice to Seller advising of such breach and Buyer's intent to terminate this Order for Seller's breach. Buyer is not required to provide assistance to Seller pursuant to Section 6(a) before such termination. Buyer may terminate this Order immediately and without prior notice upon the insolvency of Seller, filing of a voluntary or involuntary petition of bankruptcy by or against Seller, or the making of an assignment for the benefit of creditors by Seller.

(c) In the event of Seller's default or breach hereunder, Buyer may exercise any or all rights accruing to it both at law and in equity.

(d) Any such termination will be without liability to Buyer except for completed articles delivered and accepted by Buyer, payment of which can be setoff against damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited with the reasonable value thereof not to exceed Seller's cost at the date of termination or the Order price, whichever is less. Seller shall be liable for damages caused by or resulting from its default including but not limited to excess costs of procurement.

(e) If, after termination, it is determined that Seller was not in default or breach, the termination shall be deemed for Buyer's convenience and the rights and obligations of the parties shall be as set forth in Section 5, above.

## **7. LAW; DISPUTES**

(a) This Order shall be governed by the laws of Ontario and the laws of Canada applicable therein. Except as provided in Section 7(b), the Parties irrevocably and unconditionally submit to the jurisdiction and venue in federal and provincial courts located in Toronto, Ontario, Canada for any proceeding arising under this Order.

(b) Any claims, controversies, disagreements and disputes ("Disputes") concerning, arising out of, or relating to, the formation, validity, execution, performance, non-performance, interpretation, modification or termination of this Order or the breach thereof may be settled at Buyer's sole discretion either by submitting the Dispute to binding arbitration, before a single arbitrator pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. or in accordance with the International Commercial Arbitration Act if the Seller is not located in Canada. The place of arbitration shall be in Mississauga, Ontario. The language of the arbitration shall be English. The arbitrator's award shall be issued within thirty (30) days after the close of the proceedings unless otherwise agreed by the parties. The award shall also contain the arbitrator's decision regarding the allocation of costs and attorneys' fees. Should the Seller bring an action against the Buyer pursuant to the provisions of Section 7(a), then Buyer will have the option of its sole discretion to submit the dispute to arbitration pursuant to the provisions of this section by providing written notice to the Seller within twenty-one (21) days after being served personally with the action. Seller shall immediately withdraw the action against the Buyer upon receiving notice from the Buyer of its intention to submit the dispute to arbitration.

(c) Pending resolution of settlement of any Dispute arising under this Order, Seller will proceed diligently as directed by Buyer with the performance of this Order.

(d) Arbitration under this Section 7 is not a condition to termination of this Order by Buyer.

## **8. REMEDIES**

(a) The rights of the Buyer hereunder shall be in addition to their rights and remedies at law or in equity. Failure of Buyer to enforce any right shall not constitute a waiver of such right or of any other rights. No failure of Seller to perform any provision of this Order, shall be effective as a waiver thereof unless consented to in writing by the Buyer. No waiver shall constitute an advance waiver of any other provision or failure to perform.

(b) In no event shall Seller be entitled to anticipatory profits or to special (including multiple or punitive), incidental, indirect or consequential damages arising from or relating to this Order, or any breach thereof.

## 9. **CONFIDENTIALITY**

(a) All specifications, information, data, drawings, software, this Order and other items which are (i) supplied by Buyer, (ii) obtained by Seller and paid for by Buyer for performance of this Order, or (iii) which are to be furnished by Seller pursuant to this Order, are Buyer's confidential information. Seller shall not disclose this information to any third party without Buyer's prior written consent during and after the termination of this Order. Upon Buyer's request such information and all copies thereof shall be returned or forwarded to Buyer.

(b) Seller shall not publish, distribute or make any news release about the subject matter of this Order or any program relating thereto without the prior written consent of Seller.

## 10. **TOOLS**

(a) Unless otherwise herein agreed, special dies, tools, jigs, fixtures, equipment, and patterns (hereinafter collectively, "tools") shall be furnished by and at the expense of Seller. Tools, shall be kept in good condition and from time to time, when necessary, shall be replaced by Seller without expense to Buyer.

(b) Unless otherwise herein agreed, tools furnished by Buyer to Seller, or specifically paid for by Buyer, shall be the property of Buyer, shall be subject to removal upon written notice to Seller at any time,, shall be used only in filling orders from Buyer, shall be maintained by Seller in good working condition, shall be held at Seller's risk, and shall be kept insured by Seller while in its custody or control in an amount equal to the replacement cost thereof, with loss to be paid to Buyer. Notice of loss or damage shall be furnished to Buyer within seven (7) calendar days from the date thereof. Seller shall provide Buyer with a certificate of insurance naming Buyer as an additional insured.

(c) Seller agrees to make no charge for storing Buyer's tools after completion of this Order unless such charges are authorized by a separate Storage Agreement entered into by both parties.

(d) No tools owned by Buyer shall be reworked, altered, or constructed by Seller without prior written permission from Buyer.

(e) Buyer shall have the right to enter Seller's premises and any other premises where tools are located at all reasonable times to inspect its tools and Seller's records with respect thereto.

In the event, in Buyer's sole opinion, the quantity or condition of the tools are different from that expected by Buyer or the tools are rendered unusable, damaged, or destroyed by Seller during the performance of this Order, Buyer may invoice Seller for the loss in value thereof. Seller shall pay such invoice within seven (7) days of the date of the invoice. Buyer does not warrant the accuracy of tools which it furnishes and all articles delivered by Seller must be in strict accordance with the requirements of this Order.

## 11. DATA

(a) Data, as used in this Section 11, means technical writing, sound recordings, pictorial reproductions, drawings, test results, graphs, reports or other representations and works of a technical nature, which are specified to be delivered or which are produced pursuant to this Order.

(b) All copyrightable material produced under this Order shall be produced by Seller as a "work made for hire", and Buyer shall be considered the author of the material for purposes of copyright. All title to, and all other rights and legal interests in all data or other subject matter prepared, procured, or produced in the performance of this Order shall vest in Buyer, subject to any right or interest of any applicable government or government agency. Seller agrees to execute an assignment giving Buyer title to all such data and agrees to have agreements with all its employees and agents adequate to convey such title, rights and legal interests by assignment. Seller agrees not to assert any rights in or to use said data except in the performance of this Order without the prior written consent of Buyer. To the extent than any such rights are inalienable or their assignment is invalid, Seller grants Buyer and its designees the exclusive, transferable, perpetual, irrevocable, worldwide and royalty free license to use such rights to the fullest extent possible. At Buyer's request, Seller will execute, and will obtain the signature of any relevant employee or contractor on, any instrument reasonably required by Seller to perfect these rights.

(c) Seller further agrees to disclose promptly and in writing to Buyer all inventions, discoveries, improvements (whether or not patentable) which Seller conceives or reduces to practice during the performance of this Order, to assign to Buyer all of Seller's rights, title and interest in and to such inventions, discoveries or improvements and to execute and deliver to Buyer all documents and to perform all reasonable acts which Buyer deems necessary for preparation, prosecution, issuance, defence and maintenance of patent applications and patents in any country.

**12. ORDER OF PRECEDENCE**

(a) The terms, provisions, conditions and warranties set forth in this Order shall control and supersede all other documents.

(b) In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether or not approved by Buyer, and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Order, Seller must, before proceeding, consult Buyer, whose written interpretation shall be final.

**13. SUBCONTRACTING**

No lower-tier subcontract or purchase order valued at (i) \$100,000 or (ii) 10 percent of the indicated value of this Order, whichever amount is less, shall be issued by Seller to any party for furnishing any of the completed or substantially completed articles (except spare parts) or other work herein contracted for without the written approval of Buyer.

**14. WARRANTY**

(a) In addition to all warranties prescribed by law, Seller warrants the articles delivered or services rendered pursuant to this Order shall be free from defects in workmanship, materials, and design and be in accordance with Buyer's specifications, drawings, and/or samples in all respects. These warranties shall survive final acceptance, payment and termination of this Order.

(b) This warranty shall extend to Buyer and Buyer's customers.

(c) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from the breach of any of these warranties, including replacement (if Buyer so elects) of nonconforming articles.

(d) Seller shall notify Buyer within seven (7) days of the discovery of any latent defect in the articles furnished or services supplied under this Order or any previous orders.

**15. INSPECTION**

(a) Notwithstanding (i) payment, (ii) passage of title, or (iii) prior inspection or test, all materials or workmanship shall be subject to inspection by Buyer, its customers and any government agency having cognizance over this Order, before, during performance, and after delivery. Buyer may require Seller to repair or replace rejected material or Buyer may accept

any articles and upon discovery of nonconformance, may reject or keep and rework any such articles not so conforming.

(b) If inspections and tests are made on the premises of Seller or Seller's lower tier subcontractors, Seller shall furnish without additional charge all reasonable facilities and assistance for the safe and convenience inspection and tests required by the inspectors in the performance of their duty.

(c) Buyer's inspection or failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Order.

(d) Buyer, its customers and any government agency having cognizance over this Order, shall have the right to inspect Seller's and each supplier's and subcontractor's manufacturing facilities, processes, inspection systems, quality assurance systems, data, and equipment as may be related to the articles furnished or services supplied under this Order.

#### **16. CHANGES**

Buyer shall have the right by written order to suspend work or to make changes from time to time in the services to be rendered or the articles to be furnished by Seller hereunder and the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of this Order or in the time required for its performance, an equitable adjustment shall be negotiated and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted in writing within thirty (30) calendar days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. Nothing herein shall excuse Seller from proceeding with this Order as changed or resuming work after Buyer has removed a suspension pending resolution of the claim.

#### **17. SCHEDULING AGREEMENT**

Buyer has issued this Order to the Seller in support of its production schedule to meet the Buyer's customer's delivery requirements. Buyer reserves the right to adjust its delivery requirements under its Order with the Seller as necessary to support this process.

#### **18. PATENTS**

Seller warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not of Buyer's design, composition, or manufacture shall be free and clear of

infringement of any patent, copyright, trade mark, or other proprietary rights. Seller shall save Buyer and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys' fees) growing out of claims, suits, or actions alleging such infringement, which claims, suits, or actions Seller, hereby, agrees to defend. In the event of an injunction or restraining order, Seller shall at its own expense, either procure for Buyer the right to continue to sell and use the article, or replace or modify the article with goods of the same form, fit and function acceptable to Buyer and its customer so it becomes non-infringing.

#### **19. TAXES**

Seller shall be liable for and pay all taxes, duties or similar charges of any nature in connection with the products and or services provided under this Order (unless otherwise agreed to by the Buyer in writing). It further is understood and agreed that the Buyer may have an obligation to withhold and to remit withholding tax on goods and or services provided in accordance with applicable tax rules and regulations and that the Buyer shall not under any circumstances be liable for reimbursing the Seller in respect of any tax withheld and remitted to the applicable tax authorities.

#### **20 ASSIGNMENTS**

Seller may not assign any rights or obligations due or to become due under this Order without the prior written consent of Buyer.

#### **21. SET OFF**

Buyer shall have the right at any time to set off any amount owing from Seller to Buyer or Buyer's subsidiaries and/or affiliates against any amount due and owing to Seller or any of its subsidiaries pursuant to this Order or any other contractual agreement between Buyer and Seller or their respective subsidiaries and/or affiliates.

#### **22. COMPLIANCE WITH LAW; GRATUITIES**

(a) Seller warrants that the articles to be furnished and the services to be rendered under this Order shall be manufactured, sold, and may be used in compliance with all relevant federal, state or provincial, and local laws, rules and regulations and Executive Orders including, without limitation, any requirements of the Government of the United States of America Federal Aviation Administration ("FAA") or the Government of Canada Department of Transport ("DOT"). Seller further warrants it has fully complied with Sections 6, 7, 12, and 15 of the Fair Labor Standards

Act of 1938, as amended, and the regulations and orders of the U.S. Department of Labor under Section 14 thereof and appropriate Canadian federal or provincial laws concerning this Order.

(b) If Seller is informed that the articles covered by this Order are being purchased directly or indirectly under a United States or Canadian government contract, Seller agrees that the federal statutes and regulations applicable to Buyer as a government contractor or subcontractor are accepted and binding on Supplier to the extent required under statute, regulation or the government contract including, without limitation, all FAR, DFAR and NASA FAR supplements and Canadian government procurement regulations called up on the face of this Order..

(c) Seller certifies that all articles, equipment and materials delivered under this Order are in conformance with applicable OSHA requirements.

(d) Seller certifies that in the performance of this Order, it will comply with all applicable U.S. Department of Transportation regulations on hazardous materials and any other pertinent federal, state, provincial, or local statutes, laws, rules, or regulations and where applicable the Canadian Transportation of Dangerous Goods regulations; and Seller further agrees to save Buyer harmless from any loss, damage, fine, penalty, or expense whatsoever that Buyer may suffer as a result of Seller's failure to comply with this certification. The foregoing is in addition to and not in mitigation of any other requirements of this Order.

(e) Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity or any kickbacks within the meaning of the Anti-Kickback Act of 1986 of the United States of America, as amended from time to time, or similar statute in Canada with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions, or performance of any contract with or Order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

### **23. INDEMNITY AGAINST CLAIMS**

(a) Seller shall defend, indemnify, and hold harmless Buyer and Buyer's directors, officers, employees, and agents from any liability, claim of liability, expense, cause of action, loss, or damage whatsoever, including attorney's fees arising out of or in any way connected with the articles or services supplied hereunder, Seller's performance or failure to perform this Order or that of Seller's agents, employees, or subcontractors. Seller shall also maintain such Public Liability, Property Damage, Employer's Liability and Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this Order or if

none are specified, in such amount as will protect Seller (or its subcontractors), Buyer and Buyer's customers from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupation Safety and Health statutes including the Occupational Safety and Health Act.

(b) Seller shall without limitation as to time indemnify and save Buyer harmless from all claims which may be asserted against or arising from articles supplied or property used in the production of this Order, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such articles or property unless the same are caused solely and directly by Buyer's negligence.

(c) Seller does hereby irrevocably indemnify and agree to defend any claim or litigation, or to pay or reimburse any judgment and all loss and expense costs (including reasonable attorney fees) incurred in connection with any claim or litigation which asserts or is based upon any alleged design or manufacturing defect, negligence, failure to warn, or breach of warranty related to Seller's product(s) (including articles, parts and components thereof purchased by Seller from its suppliers), delivered to Buyer or Buyer's customer.

(d) Seller warrants articles furnished pursuant to this Order shall be free from asbestos or asbestos containing materials.

#### **24. CHANGE CONTROL**

(a) Seller shall not have authority to make any changes to Buyer's drawings or drawings supplied by a customer to whom Buyer is a subcontractor.

(b) Seller shall have authority to change drawings that are proprietary to its organization with the prior written approval of Buyer.

#### **25. Excusable Delays**

(a) Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence; provided, that any delay or failure to perform caused by default of a supplier of Seller at any lower tier shall be excused only if it is beyond the control of both Seller and such supplier and without the fault or negligence of either and the articles to be furnished are not obtainable from other sources in sufficient time to permit Seller to meet the inspection and or delivery schedule as the case may be; and provided further, that Seller furnishes prompt written notice to Buyer of the occurrence of any such cause which will or may delay Seller's performance and the extent of such delay (an "Excusable Delay").

(b) If in the event of a delay in performance, other than an Excusable Delay, by Seller or a supplier to Seller, Buyer suffers a loss or is required to pay a penalty or damages as a result thereof, Seller shall forthwith on demand reimburse Buyer the amount claimed, or Buyer may at its option offset such amount against amounts owing to Seller.

(c) If the deliveries are re-scheduled beyond two (2) months from the original delivery schedule, the Buyer may upon written notice to the Supplier, terminate all or part of the order(s). In this event, the relevant provisions of Paragraph 5 - *Termination for Convenience* shall apply. With respect to the undelivered Articles, Buyer may terminate any or all Orders, or terminate all or part of any Orders issued there under, without compensation or liability to Seller.

## 26. **Other Terms**

(a) Each of the parties to this Agreement constitutes an independent legal entity. Nothing in this Order is intended to nor shall be deemed to create any joint venture, partnership or other agency relationship between or among any of the parties.

(b) Any provision hereof which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

(c) Seller's obligations under Sections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25 and 26 shall survive termination of this Order howsoever occurring.

(d) The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order.