


ENERPAC 	Title: MASTER PURCHASE AGREEMENT		Global
	Doc number:P-PUR-30588	Revision: 2.0	Date: Jan 2021



MASTER PURCHASE AGREEMENT


Policy

Intellectual Property Category:				
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4 - UNRESTRICTED - Free distribution to all parties

2	Jan 2021	D.Murphy	M. Boardman	L. Gyertson
1	Oct 2020	M. Boardman	M. Boardman	L.Gyertson
Rev No	Rev Date <small>Month/Year (MM/YYYY)</small>	Prepared <small>(Initial, surname and department)</small>	Approved (Doc Owner(s)) <small>(Initials, surnames and departments)</small>	Approved HSSEQ <small>(Initial, surname, dept)</small>

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MASTER PURCHASE AGREEMENT

This Agreement is made this [DATE] between [ENERPAC ENTITY] with offices located [ADDRESS] (“Buyer”) and [SELLER’S LEGAL NAME] with offices at [SELLER’S ADDRESS] (“Seller”)

PRELIMINARY STATEMENT:

Buyer desires to purchase and Seller desires to sell [name of Products] for Buyer’s _____ Product Line (“Products”); and Buyer and Seller agree that the provision of Products shall be governed by the terms and conditions set forth in this Agreement and any Addenda, exhibits and other documents incorporated herein by reference;

AGREEMENT:


IT IS THEREFORE AGREED AS FOLLOWS:

1. Participating Entities

- 1.1 Buyer Entities: Each direct or indirect subsidiary, and affiliate of Buyer or any other organization in which Buyer, (including but not limited to Enerpac Tool Group Corp. and any of its subsidiaries and affiliates) either directly or indirectly through any intermediates, has at least a twenty percent (20%) ownership (“Buyer Entity”) shall have the option but not the obligation to purchase Products under the terms of this Agreement. The term Buyer as used herein shall include Buyer and all Buyer Entities. The Seller hereby releases [buying entity] and Enerpac Tool Group Corp. from any and all liability arising out of deliveries to any other [buying entity] affiliates, provided that, such release in no way releases any affiliates from any contractual obligations they may have to the Seller under any Purchase Order for Products sold to such affiliates, including but not limited to the obligation of payment
- 1.2 Seller Entities: Seller is executing this Agreement individually and for and on behalf of each affiliate, subsidiary, and distributor of the Seller (“Seller Entities”). Seller shall insure that each Seller Entity abides by and performs according to the terms of this Agreement with regard to Purchase Orders submitted by Buyer for Product. The term Seller as used herein shall include all Seller Entities.
- 1.3 To the extent that a Seller Entity is a distributor or agent for the sales of Products for Seller that is not owned or controlled by Seller, Seller agrees that it shall either supply Product through such distributor or agent according to the terms of this Agreement or that Seller will supply product directly to Buyer under the terms of this Agreement.

2. Purchase of Product

- 2.1 Buyer will issue Purchase Orders for the Products at its sole discretion to the Seller and Seller shall provide the Products as requested by Buyer. Nothing in this Agreement shall impose any obligation on Buyer to purchase any amount of Products. The Purchase Order is an offer by Buyer to purchase the Products from Seller on the terms of the Purchase Order. A Purchase Order consists of a Buyer-issued: (i) hard copy purchase order, (ii) electronic message, or (iii) any other Buyer written communication to Seller that complies with the requirements of this Agreement (“Purchase Order”). Purchase Orders released by Buyer will typically include: (a) a Purchase Order number, (b) Product delivery date(s), and (c) Product quantities. Seller will be deemed to have accepted a Purchase Order issued by Buyer in accordance with the terms of this Agreement and a binding contract formed upon the earliest of: (a) Seller commencing work or performance with respect to any part of the Purchase Order; (b) Seller delivering written acceptance of the Purchase Order to Buyer; (c) any conduct by Seller that fairly recognizes the existence of a contract for the purchase and sale of Product; or (d) three (3) days following Buyer’s delivery of the Purchase Order to Seller in the absence of Seller’s written rejection of such Purchase Order.
- 2.2 Any additional or different terms proposed by Seller, whether in Seller’s quotation, acknowledgement, invoice or otherwise, are unacceptable to and expressly rejected by Buyer, and are hereby waived by Seller and are not part of the Purchase Order. However, any proposed modification of the terms of the Purchase Order by Seller shall not operate as a rejection of the Purchase Order if Seller commences work or is otherwise deemed to have accepted Buyer’s offer as provided at clause 2.1 above, in which case the Purchase Order shall be deemed accepted by Seller without any such proposed modifications. Any reference in the Purchase Order to Seller’s quote or other prior communication shall not imply acceptance of any term, condition or instruction but is solely to incorporate the description or specifications of the Products, but only to the extent that such description or specifications are not in conflict with the description and specifications in the Purchase Order. If the Purchase Order is found to be an acceptance of any prior offer or proposal by Seller, such acceptance shall be limited to and conditional upon Seller’s acceptance of the terms of the Purchase Order.

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3. Quantity

3.1 Buyer may require Seller, at Seller's expense, to participate in electronic data interchange or similar inventory management program for notification of Purchase Orders, shipping confirmation and/or other information relating to the Purchase Order. In the event Seller is a "user" pursuant to any Buyer's third party software license, Seller shall use such applications for its intended purpose and in accordance with the terms and conditions of such license. From time to time, Buyer may provide Seller with volume and/or quantity forecasts or projections for Buyer's Product needs. Seller acknowledges that the projections, unlike a Purchase Order, are for planning purposes only and are not binding on Buyer. Buyer makes no representation, warranty or guaranty of any kind or nature whatsoever as to the accuracy of the projections.

4 Delivery; Purchase Orders

4.1 Seller shall manufacture and ship Buyer's requirements for the Products in such quantities and at such time as identified by Buyer as firm orders in the Purchase Order, or if a blanket Purchase Order, in scheduling agreements, manifests or other similar releases that are transmitted to Seller from time to time during the term of the Purchase Order, and after consideration by Buyer of agreed upon lead times. Material releases, scheduling agreements, manifests or other similar releases are incorporated into, and are an integral part of, the Purchase Order and are not independent contracts. All the Products received in excess of the quantities in a Purchase Order shall be subject to return for credit at Seller's expense.

4.2 Time and quantities are of the essence under the Purchase Order. If Seller fails to deliver by the due date specified in the Purchase Order, Buyer may chargeback an amount equal to one percent (1%) per day of delay up to ten percent (10%) of the Purchase Order cost with a minimum of one hundred US dollars (US\$100), as liquidated damages and not as a penalty. The payment of liquidated damages shall not relieve Seller from its obligations under this Agreement (including the obligation to deliver the Products).


4.3 Buyer may change the timing of delivery of previously scheduled shipments or direct temporary suspension of scheduled shipments from time to time in its sole discretion, neither of which actions shall entitle Seller to modify Seller's compensation, price or other terms or conditions set forth in the Purchase Order. If, as the result of any of Seller's acts or omissions, Seller shall fail to timely meet Buyer's delivery requirements and more expeditious methods of transportation for the Products are available, Seller shall ship the Products by a transportation method that will meet Buyer's requirement or, if that is not possible, by the most expeditious transportation method possible. In either such case, Seller shall be solely responsible for any incremental costs due to the more expeditious transportation method.

4.4 Unless otherwise agreed upon, all pricing and shipments are to be made DDP (as defined in Incoterms 2020 published by the International Chamber of Commerce), Buyer's facility. Different Incoterms may be applicable depending upon Buyer's affiliate location.

4.5 If Seller is responsible for set-up or installation under the Purchase Order, Seller shall bear all of the necessary and incidental costs, including, without limitation, travel and living expenses and provision of tools and the like to accomplish Seller's obligations under the Purchase Order.

4.6 Seller shall, among any other instructions that may be contained in any supply manuals provided by Buyer to Seller: (i) properly pack, mark, and ship the Products according to the requirements of Buyer, the involved carriers and the country of destination; (ii) route all shipments according to Buyer's instructions; (iii) label or tag each package according to Buyer's instructions; (iv) provide papers with each shipment showing the Purchase Order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (v) promptly forward the original bill of lading or other shipment receipts for each shipment according to Buyer's instructions and carrier requirements. Buyer's count shall be accepted as final and conclusive on shipments not accompanied by Seller's itemized packing list. Partial shipments, if authorized by Buyer, shall not be construed as making the obligations of Seller severable.

4.7 Before the Products are shipped, Seller shall give Buyer sufficient warning in writing (including appropriate labels on all the Products, containers, and packing, including, without limitation, disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is a substance or material or is otherwise part of the Products, together with any special handling instructions that are needed to advise carriers, Buyer, and their respective employees or others handling the Products how to take appropriate measures while handling, transporting, processing, using or disposing of the Products, containers, and packing to best prevent bodily injury or property damage. Seller shall comply with all applicable national, state, provincial, and local laws and regulations pertaining to product content and warning labels, including, but not limited to the U.S. Toxic Substances Control Act and European Union Directive 2000/53/EC or any successor law.

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4.8 Seller will keep adequate levels of inventory to meet the on-time delivery requirement. Buyer may provide Seller with a listing of inventory levels on-hand, on a quarterly basis. Seller agrees to participate in Buyer's Kan-Ban delivery system, if ever requested to do so by the Buyer without further cost to Buyer.

5 Price; Payment Terms

5.1 Quotations will be provided to Buyer within ten (10) business days of request. The Product prices specified in Exhibit A are referred to in this Agreement as the "Price(s)". The Prices include all Product-related packaging, labeling (including, but not limited to, date of manufacture and bar code labeling), insurance, storage, handling, interest charges, service charges, and any other expenses. The Prices also include shipment charges, unless otherwise agreed to by the parties. The purchase price for the Products is set forth in the Purchase Order and is in U.S. Dollars unless otherwise stated. Unless otherwise stated in the Purchase Order, the purchase price: (i) is a firm fixed price for the duration of the Purchase Order and not subject to increase for any reason, including, but not limited to, increased raw material costs, increased labor or other manufacturing costs, increased development costs, currency fluctuations or changes in volumes or program length from those estimated or expected; (ii) is inclusive of all federal, state, provincial, value added and local taxes and any duties applicable to provision of the Products; and (iii) is inclusive of all storage, handling, packaging and all other expenses and charges of Seller. Seller shall separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to pay or collect from Buyer.

5.2 Invoices shall be issued by Seller to Buyer no earlier than delivery of the Products to Buyer. Seller shall, at its sole expense, comply with Buyer's instructions and then current policies with respect to the form, content and method for submission of invoices. Seller shall promptly submit correct and complete invoices or other agreed upon billing communications with appropriate supporting documentation and other information reasonably required by Buyer after delivery of the Products.


5.3 Unless otherwise stated in the Purchase Order, Buyer shall pay invoices for the Products which are properly presented and not subject to dispute according to the terms stated in the Purchase Order. If no terms are stated in the Purchase Order, Buyer shall pay net ninety (90) days after the later of: (i) the Products being received and accepted at Buyer's facility, or (ii) Buyer's receipt of Seller's invoice.

5.4 Seller acknowledges and agrees that Seller's financial condition, insolvency and/or failure to timely pay its suppliers or other creditors may create a disruption in the supply chain. Accordingly, Seller agrees to supply to Buyer as requested by Buyer or by a Buyer's third party agent one of the following, at Buyer's election: (1) a complete set of audited current financial statements, (2) a current Dun & Bradstreet financial report, or (3) if publicly held, Seller's most recent annual report to shareholders and management proxy information. In the event Buyer elects in its sole and absolute discretion to pay any of Seller's obligations in order to avoid or cure a disruption in the flow of the Products to Buyer, Buyer shall have the right to withhold from and set off against any funds due to Seller from Buyer the aggregate amount paid in respect of Seller's obligations and, if such right of setoff is insufficient for Buyer to immediately recover all such amounts, Seller shall pay to Buyer the remaining balance within ten (10) days of Buyer's payment.

5.5 Seller will implement a cost reduction program to achieve reductions in Buyer's cost of Products by Seller utilizing cost-effective design, lower cost components, new technology, productivity improvements, and automation of the manufacturing process, provided that Product quality, performance, reliability, and compliance with the Specifications are not compromised or jeopardized. Seller will also fully cooperate with Buyer in Seller's implementation of such a program. Buyer will provide Seller with such assistance in the selection of materials, components, and manufacturing processes for Seller's analysis. The goal of the cost reduction program is to annually reduce Prices during the Term as may be mutually agreed to by the parties in writing. Seller will participate with Buyer in yearly cost savings programs yielding a minimum of five percent (5%) annual savings. Any cost savings realized will be shared between Buyer and Seller.

5.6 The parties recognize that continuing to be competitive in price, performance, delivery, reliability, quality and technology is essential. If any other customer of Seller obtains aggregate pricing and/or rebate terms with respect to any Product of Seller which is more favorable (taking into account all credits, discounts, rebates, adjustments, bonuses, allowances or any other incentives offered) than those terms provided to Buyer at any time during the term of this Agreement, Seller agrees that it will retroactively adjust the pricing and/or rebate terms for each such Product to conform to the most favorable terms and Seller shall promptly pay Buyer any amounts owed to Buyer therefrom. Buyers shall have the right to conduct periodic reviews of Seller's books and records with respect to such Products to confirm vendor's compliance with the provisions of this paragraph.

5.7 It is understood and agreed to by Seller that the prices under this Agreement shall be fixed through the term. Notwithstanding the foregoing, Buyer agrees to reasonably accommodate, at its sole discretion, any necessary price increases due to factors beyond the reasonable control of Seller; provided however that under no circumstances such price increase shall exceed three percent (3%) of the current prices.

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6 Quality


- 6.1 Seller shall conform to all quality control guidelines, standards, and inspection systems and participate in supplier quality and development programs, including but not limited to Labeling, Packaging and Shipping Guidelines, Global Procurement Procedure, Global Procurement and Logistics Manual, each as established or directed by Buyer and its customer for the Products and services similar to the Products. These and additional applicable guidelines standards, policies or systems are accessible at Buyer guidelines, standards, policies and systems are accessible at www.enerpac.com/en-us/support/e/supplier-documentation. To the extent that the above are amended, supplemented or replaced, Seller shall comply with such changes.
- 6.2 Seller is responsible for the performance and quality of all of its suppliers from which Seller obtains supplies or services it uses to produce Products. Seller shall maintain adequate development, validation, testing, launch and on-going supervision to assure that all Products sold to Buyer conform to all specifications, standards, prints, samples and descriptions set forth in the Purchase Order, including as to performance, fit, form, function, materials, and appearance. In the event that Seller ships any Products which are non-conforming or breach the warranties below, Buyer may require Seller, at Seller's sole cost and expense, to inspect the Products in such a manner (including the use of a third party inspector or sorter) as Buyer determines will insure that all future Products will conform to the Purchase Order. Any inspection or testing, the lack thereof, or lack of response shall in no way release Seller from any quality or warranty obligations under the Purchase Order.
- 6.3 If defective or non-conforming Products are rejected by Buyer, the quantities under the Purchase Order shall be correspondingly reduced unless Buyer otherwise notifies Seller, and Seller shall not replace reduced quantities without a new Purchase Order from Buyer directing it to do so. Following rejection of the non-conforming Products, Seller shall in Buyer's sole and absolute discretion, without prejudice to any other right or remedy of Buyer: (i) accept the return, at Seller's sole expense, of the Products and refund to Buyer the full invoice price plus all transportation and other charges associated with the non-conforming Products; (ii) replace the non-conforming Products with conforming Products, with all associated costs and expenses, other than the original invoice and shipping prices, being borne by Seller; or (iii) at Seller's sole expense, correct at any time prior to shipment from Buyer's plant the Products that fail to meet the requirements of the Purchase Order.
- 6.4 Promptly upon learning of defective or non-conforming Products, Seller shall develop, document and implement corrective actions designed to ensure that all Products are produced in accordance with all applicable quality control policies and standards of Buyer and Buyer's customer. Seller shall immediately notify Buyer in writing when it becomes aware of any raw material, component, design or defect in the Products that is non-conforming or may be or become harmful to persons or property.

7 Warranty

- 7.1 In addition to any warranties contained in Purchase Orders, Seller warrants to Buyer that Products supplied shall: (i) conform with the specifications, drawings and other details supplied or adopted by Buyer; (ii) be merchantable and fit for their intended use; (iii) be of good quality, design and workmanship and entirely free from defects; (iv) satisfactorily fulfil the performance requirements supplied or adopted by Buyer; and (v) conform with all applicable laws, rules, regulations and requirements in the manufacture and distribution of products and supplies and in providing services to Buyer from time to time in force.
- 7.2 In addition to any warranties contained in Purchase Order, the Seller warrants to Buyer that: (i) it has the authority to enter into and perform this Agreement; (ii) it has obtained the necessary approvals from all certification bodies in relation to Products; (iii) neither the design, manufacture and function of the Products nor the provision, use or sale thereof will in any way infringe upon or violate any patent, trademark, trade secret, copyright or other rights of any party; (iv) it will perform its obligations under this Agreement and each Purchase Order in compliance with all applicable laws, regulations, and other legal requirements; and (v) it will have and transfer to Buyer good and marketable title to all Products delivered under this Agreement and each Purchase Order free and clear of any and all liens, restrictions, reservations, security interests or encumbrances.

8 Remedies; Indemnification Obligation

- 8.1 The rights and remedies reserved to Buyer in each Purchase Order shall be cumulative with and in addition to all other or legal or equitable remedies available to Buyer. Seller is liable for all damages incurred by Buyer as a result of Seller's: (i) breach of any representation or warranty set forth in this Agreement and/or Purchase Order; (ii) failure to timely deliver conforming or otherwise non-defective Products; and/or (iii) failure to comply with the Purchase Order, even if Seller has cured the breach. Such damages shall include but not be limited to costs, expenses and losses incurred directly or indirectly by Buyer: (a) in connection with inspecting, sorting, storing, reworking, repairing or replacing the non-conforming Products; (b) resulting from production interruptions; (c) conducting or participating in Remedial Action(s) or other corrective service actions; or (d) resulting from personal injury (including death) or property damage


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caused by the non-conforming Products. Buyer's damages include reasonable attorneys' fees and other professional fees, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials.

- 8.2 In any action brought by Buyer to enforce Seller's obligations under the Purchase Order, Seller acknowledges and agrees that monetary damages may not be a sufficient remedy for any actual, anticipated or threatened breach of the Purchase Order and that, in addition to all other rights and remedies that Buyer may have, Buyer shall be entitled to specific performance including injunctive or other equitable relief as a remedy for any such breach, in addition to recovery of Buyer's reasonable attorneys' fees and expenses.
- 8.3 To the fullest extent permitted by law, (i) Seller hereby assumes the entire, sole responsibility for any injury to person, including death, or damage to property of any kind or nature caused by, resulting from or in connection with the furnishing of the Products by Seller or anyone acting on its behalf; (ii) Buyer shall not be responsible for any injury to person (including death) or damage to any property resulting from Seller's possession, use, misuse or failure of any equipment, tooling or other property of Buyer furnished to Seller, and the use of any such property by Seller shall constitute acceptance by Seller of all responsibility for any claims for such injury or damage; and (iii) Seller shall defend, indemnify and hold harmless Buyer, Buyer's customer and the end-users of the products sold by Buyer or the end users of the products which incorporate the Products and all of their respective agents, customers, invitees, subsidiaries, affiliates, successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising out of or resulting from any defective Products, or from any negligent or wrongful act or omission of Seller or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of the Purchase Order including the cost of Remedial Actions.
- 8.4 If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises: (i) Seller shall examine the premises to determine whether they are safe for the requested work and shall advise Buyer promptly of any situation it believes to be unsafe; (ii) Seller's employees, contractors, and agents shall comply with all laws and regulations that apply to the premises and if so requested, must leave Buyer's premises at Buyer's sole and absolute discretion; (iii) Seller's employees, contractors, and agents shall not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal, or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Seller shall indemnify and hold Buyer and its agents, successors and assigns, harmless from and against any liability, claims, demands or expenses (including reasonable attorneys' and other professional fees, settlements and judgments) for damages to the property of or personal injuries (including death) to Buyer, its employees or agents, or any other person or entity arising from or in connection with Seller's work on Buyer's premises or Seller's use of Buyer's property.
- 8.5 Seller's obligations under this clause 8 to defend and indemnify shall apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise and, to the maximum extent permitted by applicable law, Seller's indemnification obligations shall apply even as to losses caused in in part by an indemnified party's negligence, except to the extent that losses are caused by the negligence or willful misconduct of such indemnified party. Buyer has the right to be represented by and actively participate through its own counsel in the defense and resolution of any indemnification matters, at Seller's expense. The indemnification obligations of Seller are independent of and in addition to any insurance and warranty obligations of Seller. The indemnification obligation of Seller shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under Workers' Compensation Acts, or laws governing occupational diseases, disability benefits or other employee benefits.

9 Changes

- 9.1 Buyer reserves the right at any time, by written notice to Seller, to make changes, or to require Seller to make changes, to drawings, specifications, sub-suppliers, samples or descriptions of the Products. Buyer also reserves the right to otherwise change the scope of the work covered by the Purchase Order, including work with respect to such matters as inspection, testing or quality control. Buyer may also require Seller to source the supply of raw materials either from itself or from specified third parties. Seller shall promptly make any such requested change.
- 9.2 In order for Seller to request a reasonable difference in price or time for performance as a result of a change described in clause 9.1, Seller must notify Buyer of its request in writing within ten (10) days after receiving notice of the change. Buyer may request reasonable additional documentation from Seller relating to any change in specifications, price or time for performance. After receiving all requested documentation, Buyer, in consultation with Seller, may equitably adjust the price or time for performance. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, Buyer's requested change shall not affect the price or time for performance.

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9.3 Seller shall not make any change relating to the Products, including without limitation, in the Products' contents, design, specifications, processing, packing, marking, shipping, price, manufacturing location or date or place of delivery, except at Buyer's written instruction or with Buyer's prior written approval. If Seller discontinues the manufacture or supply of any Products, and/or if Seller changes manufacturing locations or any manufacturing processes, it shall inform Buyer at least six (6) months before such discontinuation in order to give Buyer the opportunity to place a final order.

10 Service Parts

10.1 Seller shall supply and maintain a reasonable inventory of spare and replacement parts, and components to produce such parts ("Service Parts") for the duration of the reasonable life of the Products needed to fulfill Buyer and Buyer's customer's service and replacement requirements at reasonable prices. If Seller discontinues the manufacture or supply of any Service Parts, it shall inform Buyer at least six (6) months before such discontinuation in order to give Buyer the opportunity to place a final order.

10.2 More specifically, Seller agrees to support Buyer's service needs for a minimum of ten (10) years as long as Service Parts are available and production capabilities at Seller exist. In the event that Service Parts are approaching end of life, Seller will advise Buyer of the need to issue a Last Time Buy Purchase Order. If agreed to by Buyer, Seller will buy any additional Service Parts and or components. If at the end of the relationship there is an excess inventory of Service Parts, Buyer will have the option to purchase from Seller. Prices for Service Parts will be the latest agreed to cost prices by Buyer as long as the Service Parts can be taken from a current production series. If a series is no longer produced, Seller and Buyer will agree in good faith upon the price of the Service Parts.

10.3 At Buyer's request, Seller shall make service literature and other materials available at no additional charge to support Buyer's sales activities. Unless otherwise expressly agreed in writing by an authorized representative of Buyer, Seller's obligations under this clause shall survive termination or expiration of the Purchase Order for any reason.

11 Customs Regulations & Trade Compliance

11.1 Seller shall comply with all applicable import and export control, trade, and financial sanctions laws, rules, and regulations, including but not limited to the U.S. Export Administration Regulations, U.S. trade and financial sanctions laws and regulations, and other foreign trade control laws and similar laws of the territory where Seller operates relating to the performance of its obligations hereunder.


11.2 Seller shall obtain the export licenses or authorizations necessary for the export of Products, unless otherwise set forth in the Purchase Order, in which case Seller shall promptly provide to Buyer all information necessary to enable Buyer to obtain the licenses or authorizations. Seller shall promptly notify Buyer in writing of any material or components incorporated in the Products that Seller purchases in a country other than the country in which the Products are delivered. Seller shall furnish any and all documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements. Seller shall promptly advise Buyer of any material or components imported into the country of origin and any duty included in the Products' purchase price. If the Products are manufactured in a country other than the country in which Products are delivered, Seller shall mark the Products "Made in the [country of origin]." Seller shall provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the Products into the country in which the Products are delivered. Seller warrants that any information that is supplied to Buyer about the import or export of the Products is true and that all sales covered by the Purchase Order shall be made at not less than fair value under the anti-dumping laws of the countries to which the Products are exported.

11.3 To the extent applicable, the Products and the containers into which they are placed for shipment shall be marked in accordance with all U.S. laws including but not limited to 19 CFR §134 (as amended from time to time). Seller shall also be responsible for compliance with additional regulations and guidelines regarding supply chain security published by US Customs, the Canada Customs and Revenue Agency, and any other domestic or international government or agency, including the Security and Accountability for Every Port Act of 2006 (as amended from time to time).

11.4 Seller shall be responsible for the full costs of any delay in delivery of the Products caused by its failure to comply with the requirements of this clause 11, including, but not limited to, missing, incomplete, untimely or inaccurate data being furnished to Buyer, Buyer's agents or any governmental authority.

12 Force Majeure

12.1 Any delay or failure of either party to perform its obligations shall be excused if and to the extent that the party is unable to perform due to events or occurrences beyond its reasonable control and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority;

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embargoes; epidemics, pandemics, fires; explosions; natural disasters; riots; wars; sabotage; or court injunction or order (collectively "Force Majeure"). Seller, at its expense, shall use its best efforts to mitigate any adverse effects or costs to Buyer due to any actual or potential Force Majeure.

- 12.2 Seller shall immediately give written notice to Buyer of any event or occurrence that threatens to delay or actually delays Seller's performance under the Purchase Order. Such notice shall include all relevant information with respect to such threat, including the possible duration and impact of a delay. During any delay or failure to perform by Seller, Buyer may, at its option purchase the Products from other sources and reduce its schedules to Seller by such quantities, without liability to Seller.

13 Termination

- 13.1 Seller acknowledges that Buyer is purchasing the Products under circumstances in which timely manufacture and delivery is required, and that Buyer is relying upon Seller's agreement to timely manufacture and deliver to Buyer the Products at the price, in the quantities and on the other terms and conditions stated in the Purchase Order. Accordingly, Seller may not terminate this Agreement before its expiration.

- 13.2 This Agreement shall have a term of thirty six (36) months unless otherwise terminated as provided herein. Buyer may terminate the Purchase Order for Cause, which shall be effective upon delivery of written notice or upon such other date specified by Buyer in writing. "Cause" for termination includes the following actions: (i) Seller breaches any representation, warranty or other term of the Purchase Order and, within five (5) days of receipt of written notice from Buyer, fails to cure, or to commence and continue steps to cure to Buyer's satisfaction with diligence and promptness; (ii) Seller fails to deliver, or threatens not to deliver, the Products in accordance with a Purchase Order; (iii) Seller fails to meet applicable quality requirements so as to endanger timely and proper performance of the Purchase Order; (iv) Seller makes an assignment for the benefit of creditors; (v) proceedings in bankruptcy or insolvency are instituted by or against Seller; (vi) at any time in Buyer's sole judgment Seller's financial or other condition or progress on the Purchase Order shall be such as to endanger timely performance.

- 13.3 Buyer also may, at its option and in its sole discretion, immediately terminate all or any part of this Agreement at any time and for any reason upon thirty (30) days written notice to Seller. Upon receipt of notice of termination, whether under clause 13.2 above or this clause 13.3, unless otherwise directed by Buyer, Seller shall: (i) promptly terminate all work under the Purchase Order on the effective date of termination; (ii) transfer title and deliver to Buyer or its designee the finished Products, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing the Products for itself or for others; (iii) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination; (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest; and (v) upon Buyer's request, fully cooperate with Buyer in transferring the production of the Products to a different supplier.


- 13.4 In the event Seller decides to discontinue a Product or a specific component, and/or if this Agreement is terminated for convenience by Buyer pursuant to this clause, Buyer will buy from Seller, at Seller's written request all finished Products and any raw materials corresponding to any accepted Purchase Order and any specific components that are exclusively purchased by Seller for the manufacture of Buyer's Products, up to a maximum of the open Purchase Order quantity of the relevant Product, raw material and/or the specific component at a purchase price of hundred percent (100%) of the cost price to Seller of the relevant specific component/s plus a handling fee equal to two percent (2%) of such purchase value. For any NCNR components or long lead time components, prior authorization is required from Buyer. If authorized, Buyer would be responsible for any such authorized quantities.

- 13.5 In the event of discontinuation or termination as provided in clause 13.4. above: (i) Seller will cancel (when possible) as soon as it receives such notice of termination, any open purchase orders with its suppliers for any specific components necessary for production of the affected Products; and (ii) Seller shall use its best efforts to resell all relevant specific components on stock to other customers or suppliers, if possible, in order to mitigate Buyer's purchase obligation hereto, provided however, that in all such cases, Buyer will still be obligated to pay Seller its two percent (2%) handling fee for each such specific component that could not be resold as per this clause.

- 13.6 Seller shall inform Buyer of its need to discontinue a specific component, or modify the method of manufacturing or composition of a Product or specific component in writing, at least six (6) months in advance. In such an event, Seller will take diligent action in an attempt to find an alternative component and shall keep Buyer updated on its efforts, and Buyer shall have the option to purchase up to two times the usual amount of Products or specific components during the notice period.

14 Transition of Supply

- 14.1 In connection with the expiration, cancellation or termination of a Purchase Order or this Agreement by Buyer, in whole or in part, for any or no Cause or Buyer's election to change to an alternate supplier of the Products (including a Buyer-owned or operated facility) whether in response to Seller's request or otherwise, Seller shall give Buyer its full and

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prompt cooperation as set forth herein in transitioning from Seller to Buyer's new supplier and when requested by Buyer, Seller shall return to Buyer all Buyer's property in as good condition as when received by Seller (reasonable wear and tear excepted) and shall comply with Seller's obligations relating to Seller's property in this Agreement.

15 Insurance

15.1 Seller shall maintain and require its subcontractors to maintain the following insurance coverage (or any other corresponding international policies): (i) comprehensive general liability insurance; (ii) comprehensive automobile liability insurance; (iii) business interruption insurance; (iv) workers compensation and employer's liability insurance covering all employees engaged in the performance under this Agreement for claims arising under any applicable workers' compensation, occupation disease or health and safety laws and or regulations; (v) all risk property insurance for Seller and for Buyer's property under Seller's care, custody and control; and (vii) any such other insurance coverage as may be requested from time to time by Buyer. In each case, with the exception of workers compensation, Seller's insurance coverages will name Buyer and its affiliates as loss payee(s) and/or "additional insured(s)" on a primary and non-contributory basis, and the coverage will be in such amounts sufficient to cover obligations set forth herein or in such amounts required by Buyer. Each policy will provide that the underwriters waive all subrogation rights in favor of Buyer and its affiliates. Seller shall furnish to Buyer a certificate (or any other similar proof of insurance) showing full compliance with the requirements set forth in this clause within ten (10) days of Buyer's written request. All insurance required to be carried by Seller shall be with a company or companies licensed in the jurisdiction in which the services are being performed and having S&P ratings of A- or better.

16 Audit; Plant Inspections

Upon reasonable notice to Seller, either Buyer, Buyer's customers or their respective third-party designees may audit Seller's production facility, the Products and any other Seller property (including all pertinent documents, data and other information) related to the Purchase Order for the purpose of verifying Seller's costs and its compliance with or its ability to perform its obligations under the Purchase Order. Seller shall provide, without additional charge, all reasonable facilities and assistance.

17 Tooling

17.1 Under this Agreement Seller may supply the Products utilizing fixtures and tooling owned by Buyer, or purchased by Seller with funds provided by Buyer for such purpose "Buyer Tooling". Buyer Tooling utilized for the Products (if any) will be set out in Exhibit B, which Exhibit may be modified from time to time by the parties to reflect current Buyer Tooling. Seller acknowledges and agrees that all rights, title and interest in and to such Buyer Tooling is owned by Buyer, free and clear of all liens and encumbrances, security interests and claims of Seller and Seller's creditors. Seller hereby releases any interest it may have or claim to have in such Buyer Tooling.

17.2 Seller hereby agrees to label all Buyer Tooling conspicuously indicating Buyer's ownership; and agrees that Buyer shall have the right to enter into Seller's facilities and immediately take possession of the Buyer Tooling at any time. Additionally Buyer may request that Seller transfers the Buyer Tooling to any other third party Seller at the expiration or earlier termination of this Agreement, or at any time at Buyer's request.

17.3 Seller agrees to maintain and keep up to date and ongoing inventory list of all Buyer Tooling that is in the Seller's possession.

17.4 Seller agrees to maintain adequate storage to insure that all of Buyer Tooling is stored in useable condition and in such a location or facility to insure against theft and damage. Seller also agrees to maintain adequate insurance coverage for the replacement cost of the Buyer Tooling in the event of the tooling being damaged or destroyed for whatever reason.

17.5 Seller will not scrap out any tooling unless authorized in writing by Buyer.


17.6 Seller acknowledges that it has carefully inspected the Buyer Tooling and that the Buyer Tooling is in good and proper working conditions, free from any defect and compliant with any health and safety applicable laws and regulations.

17.7 The Seller shall perform, at its own cost any and all ordinary maintenance activities necessary in order to ensure the proper, efficient and safe running of the Buyer Tooling. Seller shall be fully liable for Buyer Tooling worsening occurred during the duration of the Agreement, except for any worsening that arises as a consequence of the Buyer Tooling proper usage.


17.8 The Buyer Tooling, shall be used by the Seller solely for manufacturing the Buyer's Products unless otherwise agreed to in writing by Buyer.

17.9 Seller shall not purchase or manufacture any tooling for the account of Buyer or charge Buyer for any tooling except as authorized in the Purchase Order or otherwise as authorized in writing by the Buyer in a separate document.

18 Intellectual Property

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- 18.1 “Intellectual Property” shall mean and include patents, copyrights, trademarks, trade names, trade dress, trade secrets, copyrights, know-how, concepts, ideas, discoveries, inventions (whether or not patentable), processes, developments, designs, suggestions, materials, improvements, works of authorship, artwork, software, documentation, intellectual property/proprietary rights, rights in other tangible and intangible assets of a proprietary nature, domain names, company names, and the like. "Intellectual Property Rights" means all forms of Intellectual Property protection or proprietary rights available throughout the world, including, without limitation, utility patents, design patents, patent applications, design registrations, utility models, industrial designs, copyrights, trademarks, trade dress, trade secrets, and rights in domain names. All Intellectual Property Rights including any specifications provided by Buyer to Seller shall belong exclusively to Buyer. Seller shall do nothing to adversely affect any Intellectual Property Rights of Buyer related or subject to this Agreement.
- 18.2 Seller warrants that the Products and the sale and/or use thereof (before or after incorporation into products during manufacture) are original to Seller and do not and shall not infringe any third-party’s Intellectual Property Rights.
- 18.3 Seller agrees: (i) to defend, hold harmless and indemnify Buyer and its owners, shareholders, affiliates, officers, directors, members, managers, partners, employees, attorneys and agents and any of their respective successors and assigns (each a “Buyer Indemnified Party”) against any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe or violate any third party’s Intellectual Property or Intellectual Property Rights and against any resulting damages or expenses (including attorney’s and other professional fees and expenses, settlements and judgments) arising out of or relating to the manufacture, sale or use of the Products; (ii) to waive any claim against any Buyer Indemnified Party, including any hold-harmless or similar claim, in any way related to a third-party claim asserted against such Buyer Indemnified Party for infringement of any Intellectual Property Right, and (iii) that if the sale or use of the Products is enjoined or, in Buyer’s sole and absolute judgment, is likely to be enjoined, Seller shall, at Buyer’s election in its sole discretion and at Seller’s sole expense, procure for Buyer the right to continue using the Products, replace the same with equivalent non-infringing products or modify such Products so they become non-infringing.
- 18.4 All Products, Buyer Tooling and all other deliverables which include Intellectual Property, for which Buyer has agreed to reimburse Seller, along with all Intellectual Property relating thereto and needed to manufacture, sell or use the Products are the sole and exclusive property of Buyer. Seller shall promptly disclose in an acceptable form and assign to Buyer all such Intellectual Property. Seller shall cause its employees to promptly sign any papers necessary to enable Buyer to file applications for patents throughout the world and to record rights in and to such Intellectual Property. To the extent that the Intellectual Property includes any works of authorship created by or on behalf of Seller, such works shall be considered "works made for hire", and to the extent that such works do not qualify as "works made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein.
- 18.5 Any license required by Buyer, its subsidiaries and affiliates, and their respective successors and assigns, to: (i) make, have made, repair, reconstruct, rebuild, relocate, sell and import the Products; or (ii) to reproduce, distribute and display any works of authorship fixed in any tangible medium of expression (including drawings, prints, manuals and specifications) furnished by Seller in the course of Seller’s activity under the Purchase Order, and to prepare derivative works based thereon, shall be the subject of a separately negotiated license agreement between the parties.
- 18.6 Seller shall ensure that the terms of its contracts with its subcontractors and employees are consistent with the terms of this clause.
- 18.7 Trademarks and Labelling (If Applicable): Buyer hereby grants to Seller a limited, non-exclusive, world-wide, non-transferable, royalty-free license, with the right to sublicense, solely to use the Private Label Brands, trademarks, service marks, trade names, and logos owned by or licensed to Buyer the “Buyer Trademarks”) in labeling and packaging the Products for distribution exclusively to Buyer, as directed from time to time by Buyer throughout the term of this Agreement, subject to the terms and conditions of this Agreement. Seller hereby agrees that the Buyer Trademarks shall only be affixed to the Products or other promotional materials as directed by the Buyer. Seller shall have no rights to use the Buyer Trademarks other than for purposes of labeling and packaging Products for distribution exclusively to Buyer pursuant to this Agreement or in connection with other promotional materials, which labeling and packaging or other promotional materials shall be in form and substance satisfactory to Buyer. Seller shall not use the Buyer’s Trademarks in any manner that, in Buyer’s sole and absolute discretion, may be inconsistent with Buyer’s public image or be misleading or harmful to Buyer. Upon the termination or expiration of this Agreement, Seller shall not have any right to supply or distribute any Products remaining that are labeled with any of Buyer’s Trademarks in any of Seller’s inventory. In addition, upon reasonable notice to Seller, either Buyer, or its respective third-party designee may audit Seller’s production facilities and premises to verify the compliance with the provisions of this clause and its compliance with the use of the Buyer’s Trademarks (including all pertinent documents, data and other information). Seller shall provide, without additional charge, all reasonable facilities and assistance.

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19.1 Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller under this Agreement or in connection with a Purchase Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use (except as necessary to the performance of the Purchase Order), communicate or disclose such confidential and proprietary information of Buyer or use such information for any purpose other than to perform its obligations under this Agreement. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information.

19.2 The restrictions and obligations of clause 19.1 shall not apply to information that: (i) is already publicly known at the time of its disclosure by Buyer; (ii) after disclosure by Buyer becomes publicly known through no fault of Seller; (iii) Seller can establish by written documentation was properly in its possession prior to disclosure by Buyer or was independently developed by Seller without use of or reference to any of Buyer's information; or (iv) is required to be disclosed pursuant to law, regulation or lawful order or process, however, in such event, Seller shall promptly notify Buyer of the disclosure requirement to permit Buyer to oppose or limit such disclosure.

20 Setoff

In addition to any right of setoff or recoupment permitted by law, all amounts due Seller shall be considered net of indebtedness or obligations of Seller to Buyer. Buyer may set off against or recoup from any amounts due or to become due to Seller, any amounts due to Buyer however and whenever arising. If an obligation of Seller to Buyer is disputed, contingent or unliquidated, Buyer may defer payment of all or a portion of the amount due to Seller, which amount will be reasonably correspond to the disputed obligation, until such obligation is resolved.

21 Compliance with Laws; Ethics

21.1 Seller warrants that Seller, and all Products shall comply with all applicable local, state, Federal and all other applicable laws, ordinances and regulations, including those concerned with labor, environment and safety, as those laws, ordinances and regulations are amended from time to time, including compliance with the United States Foreign Corrupt Practices Act (FCPA), the UK Bribery Act and similar international regulations (where applicable). In accordance with applicable "Conflict Minerals" laws, Seller must determine whether its products contain tin, tantalum, tungsten or gold originating in the Democratic Republic of the Congo and adjoining countries. If requested, Seller will promptly provide information or representations that Buyer reasonably believes are required to meet these compliance obligations.

21.2 If Buyer provides notice to Seller that the Products are to be provided to the United States government, Seller shall comply with the federal laws, regulations, and rules applicable to subcontractors of government contractors, including those relating to equal employment opportunity and affirmative action in the employment of minorities, women, the handicapped, and certain veterans, and contracting with women-owned or small and disadvantaged business concerns. Where applicable, Seller certifies that it maintains no segregated employee facilities in compliance with applicable law, and that it is not debarred from being awarded federal or federally assisted contracts.

22 Buyer's Limited Liability to Seller


BUYER'S SOLE LIABILITY UNDER THE PURCHASE ORDER (INCLUDING ITS TERMINATION, EXPIRATION OR CANCELLATION) IS TO PAY FOR THE PRODUCTS IN ACCORDANCE WITH CLAUSE 5. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS AND/OR DEFERRAL OF PRODUCTION, LOSS OF PRODUCT, LOSS OF USE, LOSS OF REVENUE, PROFIT OR ANTICIPATED PROFIT (IF ANY) IN EACH CASE WHETHER DIRECT OR INDIRECT OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

23 Assignment

Seller may not, without Buyer's prior written consent, which shall not be unreasonably withheld: (i) assign or delegate (including, without limitation, by subcontract) its obligations under Agreement or a Purchase Order, or (ii) enter into a transaction that includes a sale of a substantial portion of its assets used for production of a Product, or a merger, sale or exchange of stock or other equity interests that would result in a change of control of Seller.

24 No Publicity

Seller shall not advertise, publish or disclose to any third party (other than to Seller's professional advisors on a confidential and need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Products or any terms of a Purchase Order (including prices), or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

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25 Relationship of the Parties

Seller and Buyer are independent contracting parties and nothing in this Agreement or any Purchase Order shall make either party the employee, agent or legal representative of the other for any purpose. Neither party has any authority to assume or to create any obligation on behalf of or in the name of the other. Seller shall be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Purchase Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights accorded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

26 Conflict of Interest

Seller represents and warrants that its performance of the Purchase Order shall not in any way conflict with any continuing interests or obligations of Seller or its employees or contractors. Except with respect to the directing customer in the event Seller is a directed seller, Seller may not directly solicit Buyer's customer for sales of the Products, products substantially similar to the Products or any products substantially similar to the products sold by Buyer to Buyer's customer.

27 Governing Law; Dispute Resolution

This Agreement and all Purchase Orders shall be governed by and construed in accordance with the laws of the registered address of the Buyer except: (i) if the Buyers registered is in Asia, Africa or the Middle East, the laws of England and Wales will govern; and (ii) if the registered address of the Buyer is in South or Central America, the laws of the State of Wisconsin, USA will govern. In the event of any dispute, the parties shall first endeavor to settle the dispute in good faith by means of direct negotiation. If the parties cannot resolve a dispute within thirty (30) days after notification of the dispute by one or other of the parties, the dispute shall be finally settled by, at Buyer's sole discretion, litigation or arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The provisions of the United Nations Convention on Contracts for the International Sale of Products, and any conflict-of-laws provisions that would require application of another choice of law, are excluded.

28 No Waiver

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

29 Severability

If any provision of this Agreement or Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of the provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

30 Survival

The obligations of Seller to Buyer survive termination of this Agreement, except as otherwise provided herein.

31 Notices

31.1 A written notice is used by the parties to provide a required notice or instructions to each other, or to authorize an exception, deviation or waiver of a pre-existing obligation or requirement under the Agreement and Purchase Orders. A written notice is also used by either party to provide any notice to the other party that is required to be in writing. In the case of Buyer, any written notice is valid only if signed by a representative of Buyer's purchasing activity. A written notice may be signed manually or electronically.


31.2 A written notice may be provided by: (i) first class mail; (ii) courier service; (iii) fax; or (iv) standard e-mail with delivery confirmation received. A written notice using method (i) or (ii) is effective as of the date of delivery, and using method (iii) or (iv) is effective as of the date of transmission.

32 Interpretation

No provision may be construed against Buyer as the drafting party. Clause headings are for convenience or reference only, and do not affect the meaning of the Purchase Order.

33 Entire Agreement; Modifications

This Agreement and the corresponding Purchase Orders is the entire agreement between the parties respecting the Products and supersedes any prior agreements, negotiations or understandings of the parties respecting the Products, whether written or oral, except that a signed prior agreement (such as an award letter, statement of work, or non-

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disclosure agreement) will continue to apply to the extent not directly in conflict with the Purchase Order. This Purchase Order may only be modified by (i) a written amendment executed by authorized representatives of each party.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be executed by their duly authorized employees, as of the day and year first above written.

BUYER

SELLER

By:
Name
Title:
Date:

By:
Name
Title:
Date:


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EXHIBIT A

LIST OF PRODUCTS/PRICES/ANY ADDITIONAL PRICING CONSIDERATIONS FOR PRODUCTS AND SERVICE PARTS

AGREED PRODUCT PRICES


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EXHIBIT B

FOR TOOLING PROVIDED BY BUYER IF APPLICABLE

TOOLING DESCRIPTION

ADDITIONAL MATERIALS/RAW MATERIALS