

INNIO Waukesha Gas Engines, Inc. Terms of Purchase

1. ACCEPTANCE OF TERMS.

1.1. Incorporation.

These Terms of Purchase, the purchase order to which they are attached (the "Order"), any related supply and/or service agreement, and any agreements referenced therein, are the complete and exclusive statement of the contract between Buyer and Seller. Except as otherwise provided herein, Buyer's acceptance is conditioned on Seller's agreement to be bound by these Terms of Purchase, and all goods and services provided by Seller to Buyer will be governed hereby. Buyer rejects any and all additional or inconsistent terms proposed by Seller, whether contained in Seller's general terms and conditions or in any offer, counter-offer, purchase order, shipping documentation, release forms or otherwise. Acknowledgement of an Order by Seller, including by Seller beginning performance of the work thereunder, shall be deemed Seller's acceptance of these Terms of Purchase.

1.2. Rule of Precedence.

These Terms of Purchase take precedence over any different or inconsistent terms in any other document connected with this transaction unless such different or inconsistent terms are

(a) part of a written supply and/or service agreement, which has been negotiated between the parties and which the parties have expressly agreed may override these terms in the event of a conflict, or

(b) set forth on the face of the Order to which these terms are attached.

In the event these terms are part of a written supply and/or service agreement between the parties, the term "Order" used herein shall mean any purchase order issued under the supply and/or service agreement. No Order constitutes an acceptance by Buyer of any offer to sell, quotation, or proposal.

2. PRICES AND PAYMENTS

2.1. Prices.

All prices are firm and shall not be subject to change. Sales tax (including GST, HST and QST) is not included.

2.2. Payments.

2.2.1. The date for payment shall be 120 days from the latter of (a) the date Buyer receives Seller's invoice that satisfies the requirements of Section 2.2.3. (but not before receipt of all goods, including documents or certificates that form part of the scope of performance) by Buyer or Seller's completion of the services, in either case, without defect and in accordance with the requirements in the Order; and (b) 48 hours from the date Buyer receives written certification from a third party or customer that Seller has completed delivery of goods or services without defect and in accordance with the requirements of the Order.

2.2.2. Buyer shall be entitled to take an early payment reduction of 0.0333% of the gross invoice price for each day before the due date that payment is made.

2.2.3. Seller's invoice shall in all cases bear Buyer's Order number and be issued no later than 30 days after receipt of the goods by Buyer or Seller's completion of the services, as applicable. Buyer shall be entitled to reject any invoice that fails to include Buyer's Order number, is issued after the time set forth above or is otherwise inaccurate, and Buyer will not be responsible for any resulting nonpayment or delay in payment.

3. DELIVERY, RISK AND TITLE PASSAGE.

3.1. Delivery.

3.1.1. Seller agrees to deliver all goods and services in accordance with the delivery times set forth in each Order. Unless otherwise agreed in writing, partial-, over-, early- or short-deliveries are not allowed.

3.1.2. Seller agrees to notify Buyer in writing as soon as it becomes reasonably foreseeable that Seller will be unable to meet any delivery time. In such case, Buyer may require delivery by the fastest method available, and Seller will be solely responsible for any additional shipping charges. If Seller delivers the goods or completes the services later than scheduled, Buyer is entitled to all available remedies under applicable law, including the right to withdraw from the Order and seek damages in lieu of performance.

3.1.3. If Seller delivers the goods or completes the services later than scheduled, Buyer may assess liquidated damages of 3% (at least EUR 500) of the total amount of the Order per each commencing week for the delay period. Notwithstanding the foregoing, the amount of liquidated damages shall not exceed 15% (at least EUR 2500) of the total amount of the Order. Buyer is entitled to claim liquidated damages in addition to Buyer's claim for performance under the Order. Buyer's resort to liquidated damages for the delay period does not preclude Buyer's right to other remedies and claims.

3.1.4. All delivery designations are INCOTERMS 2020. The delivery designation is the place where Seller's delivery obligations are fulfilled (place of fulfillment). Unless otherwise stated in the Order, all goods shall be delivered FCA, Seller's facility; however, goods that are to be shipped directly to Buyer's customer or to a location designated by Buyer's customer that are (a) not to be exported or (b) exported from the United States of America ("U.S."), shall be delivered EXW Seller's facility. The term EXW used herein is modified from the INCOTERMS 2020 definition to mean "EXW with Seller responsible for loading the goods at Seller's risk and expense". Buyer may specify contract of carriage in all cases. Failure of Seller to comply with any such Buyer specification shall cause all resulting transportation charges to be for the account of Seller and give rise to any other legal remedies available.

3.2. Transfer of Risk.

Unless otherwise agreed in writing the risk of loss with respect to all goods provided by Seller will be transferred to Buyer only upon delivery at the place of fulfillment.

3.3. Title Passage.

Unless otherwise agreed in writing:

(a) title to goods shipped from one country in the European Union ("EU") for delivery to another country within the EU, shall pass when (i) the goods leave the jurisdiction of the EU source country for goods shipped directly to a non-Buyer's EU facility, or (ii) unloaded at Buyer's loading dock for goods shipped to Buyer's EU facility;

(b) title to goods shipped from a source country for delivery within such source country (excluding shipments within the U.S., which are governed by subsection (e) below) shall pass when (i) loaded at Seller's loading dock for goods shipped directly to a non-Buyer's facility, or (ii) unloaded at Buyer's loading dock for goods shipped to Buyer's facility;

(c) title to goods shipped from outside the U.S. for delivery to outside the U.S. (excluding shipments within the EU, which are governed by subsection (a) above) shall pass when (i) they pass the ship's rail or plane's fuselage at the port of export after customs clearance for goods shipped directly to a non-Buyer's facility, or (ii) unloaded at the port of import if shipped to Buyer's facility;

(d) title to goods shipped from outside the U.S. for delivery within the U.S. shall pass when (i) they pass the ship's rail or plane's fuselage at the port of export after customs clearance for goods shipped directly to a non-Buyer's facility, or (ii) unloaded at Buyer's loading dock if shipped to Buyer's facility; and

(e) title to goods shipped from the U.S. for delivery to all locations shall pass when (i) loaded at Seller's loading dock for goods shipped directly to a non-Buyer's facility; (ii) unloaded at the port of import for goods shipped to Buyer's non-U.S. facility, or (iii) unloaded at Buyer's loading dock for goods shipped to Buyer's U.S. facility.

4. BUYER'S PROPERTY.

4.1. Property Rights.

Unless otherwise agreed in writing, all tangible and intangible property, including information or data of any description, tools, materials, drawings, computer software, know-how, documents, trademarks, copyrights, equipment or material furnished to Seller by Buyer or acquired by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain Buyer's sole and exclusive property. Such property furnished by Buyer shall be accepted by Seller "AS IS, WHERE IS" and "WITH ALL FAULTS" and without any warranty whatsoever, express or implied.

4.2. Use of Property.

Seller shall use such property at its own risk. Such property and, whenever practical, each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as Buyer's property, safely stored separate and apart from Seller's property, and properly maintained by Seller. Seller further agrees to comply with any handling and storage instructions provided by Buyer for such property. Seller shall not substitute any other property for Buyer's property. Seller will inspect Buyer's property prior to use and will train and supervise its employees and other authorized users of such property in its proper and safe operation. Seller shall use Buyer's property only to provide goods and services to Buyer pursuant to an Order, and shall not use, disclose or reproduce it for any other purpose.

4.3. Protection and Insurance of Property.

Such property, while in Seller's care, custody or control, shall be held at Seller's risk, kept free of encumbrances (except as created by Buyer), and insured by Seller, at Seller's expense, in an amount equal to the replacement cost thereof with loss payable to Buyer, and subject to removal at Buyer's request, in which event, Seller shall prepare such property for shipment and redeliver it to Buyer

in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense. At Buyer's request, Seller shall provide Buyer with an ACCORD form certificate of personal property insurance or other evidence of the foregoing coverage acceptable to Buyer. On all such policies, Buyer shall be named as an additional insured and loss payee. All such property shall be clearly marked as Buyer's property, either by mark on any such property or, if a number of goods are held in consignment storage, by identifying all such goods in that consignment storage as Buyer's property.

4.4. Invoice.

Any consigned material, tooling or technology used in production of the goods that is not included in the purchase price of the goods and/or services delivered by Seller, shall be separately identified on the commercial or pro forma invoice. Each invoice shall also include the applicable Order number or other reference information for any consigned goods and shall identify any discounts or rebates from the base price used in determining the invoice value.

4.5. Intellectual Property Rights; Licenses.

4.5.1. Buyer hereby grants Seller a non-exclusive, non-assignable, royalty-free license (which is revocable with or without cause at any time) to use any information, drawings, specifications, computer software, know-how and other data furnished or acquired by Buyer hereunder for the sole purpose of performing this Order for Buyer.

4.5.2. Buyer shall own exclusively all rights in ideas, inventions, works of authorship, strategies, plans and data created in or resulting from Seller's performance under this Order, including all patent rights, copyrights, moral rights, rights in proprietary information, database rights, trademark rights and other intellectual property rights. All such intellectual property that is protectable by copyright will be considered work(s) made for hire for Buyer under the U.S. Copyright Act and the same or equivalent under all other domestic and foreign intellectual property laws and, if such concept is not recognized, Seller will give Buyer "first owner" status related to the work(s) under all applicable laws.

4.5.3. If any such intellectual property is not owned in its entirety by Buyer automatically upon creation, then Seller agrees to transfer and assign to Buyer, and hereby transfers and assigns to Buyer, exclusively the entire right, title and interest throughout the world to such intellectual property. Seller further agrees to enter into and execute any documents that may be required to transfer or assign ownership in and to any such intellectual property to Buyer. Seller hereby irrevocably and unconditionally appoints Buyer as Seller's attorney-in-fact to execute and deliver any such documents, and to take any and all other actions necessary to transfer or assign ownership in and to any such intellectual property to Buyer.

4.5.4. In regard to software embedded in Buyer's goods or for servicing Buyer's goods that is not Buyer's property, Seller grants to Buyer and its affiliated companies and its and their respective contractors, agents and customers a non-exclusive, worldwide, irrevocable, perpetual, royalty-free right to use, perform, re-sell, sublicense, and distribute such embedded software as an integral part of such goods or for servicing the goods, or to secure such license from a third party owner of such embedded software.

4.6. Compliance.

Should Seller, without Buyer's prior written consent, design or manufacture for sale to any person or entity other than Buyer any goods substantially similar to, or which reasonably can substitute for or replace, a good covered by an Order, in any adjudication or otherwise, Buyer may require Seller to establish by clear and convincing evidence that neither Seller nor any of its employees, contractors or agents used, in whole or in part, directly or indirectly, any of Buyer's property or Confidential Information (as defined in Section 15) in such design or manufacture.

5. DRAWINGS.

Any review or approval of drawings, designs, specifications or other materials by Buyer will be solely for Seller's convenience and will not relieve Seller of its responsibility to meet all requirements of this Order.

6. CHANGES.

6.1. Change Request of Buyer.

Buyer may at any time make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications where the goods to be furnished are to be specially manufactured for Buyer; (b) methods of shipment, packaging or packing; (c) place and time of delivery; (d) amount or type of Buyer's furnished property; (e) quality; (f) quantity; or (g) scope or schedule of goods and/or services. Buyer shall document such change request in writing, and Seller shall not proceed to implement any change unless and until such change is provided in writing by Buyer. Seller shall have the right to object to any change request that will result in unreasonable consequences for Seller that cannot be eliminated by any adjustments as set out hereinafter.

6.2. Adjustment.

If any change request causes an increase or decrease in the cost of, or the time required for the performance of, any work under this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, in writing. Any Seller claim for adjustment under this Section will be deemed waived unless asserted within 30 days from Seller's receipt of the change request, and may only include reasonable, direct costs that will necessarily be incurred as a direct result of the change.

6.3. Change Request of Seller.

Seller shall notify Buyer in writing in advance of any and all:

(a) changes to the goods and/or services, their specifications and/or composition; (b) process changes; (c) plant and/or equipment/tooling changes or moves; (d) transfers of any work hereunder to a site that has not been approved by Buyer; and (e) any sub-supplier or sub-contractor changes. No such change may be implemented unless and until Buyer has had the opportunity to conduct such audits, surveys and/or testing necessary to determine the impact of such change on the goods and/or services and has approved such change in writing. Seller shall be responsible for obtaining, completing and submitting proper documentation regarding any and all changes, including complying with any written change procedures issued by Buyer.

7. PLANT ACCESS/INSPECTION AND QUALITY.

Buyer shall have the right to enter Seller's production facilities upon reasonable notice at usual business hours in order to assess Seller's work quality, conformance with Buyer's specifications and compliance with this Order, including Seller's representations, warranties, certifications and covenants. In the event that Buyer can't go to the Seller's production facilities, Seller agrees to conduct a virtual inspection by the Buyer, based on a video call, or any other technology that could be appropriate for such purposes. Seller shall assign a contact person to assist with specific inquiries related to any such assessment. Seller shall obtain consent from its own suppliers and sub-contractors to ensure that Buyer may also exercise this right at their premises.

8. WARRANTIES.

8.1. Subject of the warranty.

Seller shall deliver goods and services (a) in accordance with all technical or qualitative specifications or service standards furnished by Buyer (and in the absence of any such specifications or standards, in accordance with the state-of-the-art practice), (b) in a good and workmanlike manner and free from defects, and (c) otherwise in accordance with this Order. All goods and services shall conform to all relevant regulations as issued by applicable authorities and associations. Seller agrees to all specifications and standards referenced in the Order and any corresponding confirmation.

8.2. No obligation to inspect.

Buyer is under no obligation to inspect the goods upon their delivery. Buyer will notify Seller with respect to any goods that do not conform to the warranty in Section 8.1 within a reasonable period of time after discovering such non-conformance.

8.3. Right to Reject.

Notwithstanding Buyer's rights pursuant to Section 8.5 and elsewhere in this Order, Buyer may reject any non-conforming goods within two months after delivery. Buyer shall not be obligated to pay for any rejected goods.

8.4. Period of limitation for warranty claims.

The foregoing warranties shall apply for a period of (a) 48 months from the Date of Commercial Operation (defined below) or (b) 54 months from the date of delivery (with respect to goods) or completion of performance (with respect to services), whichever occurs first. "Date of Commercial Operation" means the date on which the goods are first put into normal use in one of Buyer's facilities, by Buyer's customer or a third party.

8.5. Scope of the warranty.

In case of a warranty claim, at the election of Buyer, Seller shall (a) repair or replace the non-conforming goods or re-perform the services, (b) refund Buyer all amounts paid with respect to such goods or services, (c) reimburse Buyer all costs incurred to repair or replace such goods or re-perform such services (including third party expenses), or (d) any combination of the foregoing, in each case, at no cost to Buyer. In the case of a repair or replacement of non-conforming goods or re-performance of services by Seller, Seller shall directly bear all related costs, including travel, transport, taxes, fees and charges. In the case of a repair, replacement or re-performance by Buyer or a third party authorized by Buyer, Seller shall reimburse Buyer all direct and indirect costs incurred thereby, including time and material spent, third party charges, travel, transport, taxes, fees and other charges.

9. SUSPENSION.

Buyer may at any time, by written notice to Seller, suspend performance of the work for such time as it deems appropriate. Upon receiving notice of suspension, Seller shall promptly suspend work to the extent specified, properly caring for and protecting all work-in-progress and materials, supplies and equipment Seller has on hand for performance. Upon Buyer's request, Seller shall promptly deliver to Buyer copies of outstanding purchase orders and subcontracts for materials, equipment and/or services for the work and take such action relative to such purchase orders and subcontracts as Buyer may direct. Buyer may at any time withdraw the suspension as to all or part of the suspended work by written notice specifying the effective date and scope of withdrawal. Seller shall resume diligent performance on the specified effective date of withdrawal. All claims for increase or decrease in the cost of or the time required for the performance of any work caused by suspension shall be conducted as if the suspension was a change request under Section 6.

10. TERMINATION.

10.1. Termination for Convenience.

Buyer may terminate all or any part of an Order, for any or no reason, at any time by written notice to Seller. Upon termination for Buyer's convenience (and not pursuant to circumstances described in Section 10.2 or 10.3), Buyer and Seller shall attempt to negotiate the reasonable termination costs, consistent with costs allowable under Section 6 and identified by Seller within 30 days of Buyer's termination notice to Seller, unless the parties have otherwise agreed in writing to a termination schedule.

10.2. Termination for Default.

10.2.1. Buyer, without liability, may by written notice, terminate the whole or any part of an Order if Seller:

(a) fails to perform within the time specified or in any written extension granted by Buyer; (b) fails to make progress which, in Buyer's reasonable judgment, endangers performance of the Order in accordance with its terms; (c) fails to comply with any of the material terms of an Order; (d) fails to comply with any of the material terms of any other purchase order or agreement between Buyer and Seller; or (e) in accordance with Section 14 or 20. Such termination shall become effective if Seller does not cure such failure to Buyer's reasonable satisfaction within ten days of receiving notice of default.

10.2.2. Upon termination (other than pursuant to Section 10.1), Buyer may procure at Seller's expense and upon terms Buyer deems appropriate in its sole discretion, goods or services similar to those so terminated. Seller shall continue performance of an Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar goods or services.

10.2.3. In lieu of termination for default, Buyer, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, making Seller liable for any costs, expenses or damages arising from any failure of Seller's performance.

10.2.4. Buyer's rights and remedies in this Section are in addition to any other rights and remedies provided by law or equity or under an Order.

10.3. Termination for Insolvency/Prolonged Delay.

If Seller (a) ceases to conduct its operations in the normal course of business, (b) fails to meet its obligations generally as they mature, (c) voluntarily commences any proceeding under bankruptcy or insolvency laws, has a receiver, trustee or monitor appointed for any material portion of its assets, or agrees to an assignment for the benefit of its creditors, or (d) has any such bankruptcy or insolvency proceeding brought against it and such proceeding is not dismissed within 60 days after first initiated, then Buyer may immediately terminate this Order without liability to the fullest extent permitted by applicable law, except for goods or services completed, delivered and accepted within a reasonable period after termination (which will be paid for in accordance with the Order).

10.4. Obligations on Termination.

Unless otherwise directed by Buyer, upon completion of an Order or after receipt of notice of termination for any reason, Seller shall immediately: (a) stop work as directed in the notice, (b) place no further subcontracts or purchase orders for materials, services or facilities hereunder (except as necessary to complete any continued portion of an Order), and (c) terminate all subcontracts to the extent they relate to work terminated. Promptly after termination, and unless otherwise directed by Buyer, Seller shall deliver to Buyer all completed work, work-in-process, including all designs, drawings, specifications, other documentation and material required or produced in connection with such work and all of Buyer's Confidential Information.

11. INDEMNITY AND INSURANCE.

11.1. Indemnity.

11.1.1. Seller shall indemnify and hold harmless Buyer and its affiliates and its or their respective owners, directors, officers, employees, agents, and other representatives and all of their respective successors and assigns (the "Indemnified Parties"), whether acting in the course of their employment or otherwise, against any and all suits, actions, and proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, fines, penalties, damages, costs, expenses, and liabilities (including court or arbitration costs and attorneys' and experts' fees) (collectively, "Losses") that any of the Indemnified Parties may suffer as a result of or that arise out of, in connection with, or relate to the acts or omissions of Seller or any of its affiliates or its or their respective owners, directors, officers, employees, agents, or other representatives or any of their respective successors and assigns (including Losses for personal injury or property or environmental damage, and Losses payable to customers of Buyer), including with respect to (a) any non-conforming goods or services, (b) any breach of an Order by Seller, or (c) the operation of Seller's business, including with respect to any alleged violation of applicable law. At Buyer's election, in its sole discretion, Seller will defend Seller with respect to any claim by a third party that is or could be subject to the foregoing indemnity obligation in any suit, action, or other proceeding, and Buyer will have the right to approve counsel for, and to control all aspects of, any such suit, action, or proceeding, including any settlement thereof.

11.1.2. Seller agrees to include a clause substantially similar to the preceding clause in all subcontracts it enters into related to its fulfillment of this Order.

11.1.3. Seller further agrees to indemnify the Buyer Indemnified Parties for any attorneys' or experts' fees (on a solicitor's and his own client basis) or

other costs that any of them incurs in the event that Buyer has to file a suit, action, or other proceeding to enforce any indemnity or additional insured provision of this Order.

11.2. Insurance.

In addition to the insurance requirements of Section 4.3, Seller undertakes to insure itself adequately against all risks related to Seller's property and operations. Seller shall provide proof of such insurance coverage upon Buyer's request.

12. ASSIGNMENT AND SUBCONTRACTING.

12.1. General Prohibition for Seller.

Seller may not assign (including by change of ownership or control, by operation of law or otherwise) any of its rights or obligations under this Order or any interest herein, including with respect to payment, without Buyer's prior written consent. Seller shall not subcontract or delegate performance of any part of the work called for under this Order without Buyer's prior written consent.

12.2. Requirements for Assignment; Subcontracting.

Should Buyer grant consent to Seller's assignment, Seller will ensure that such assignee shall be bound by the terms and conditions of this Order. Further, Seller shall advise Buyer of any subcontractor or supplier to Seller (a) that will have at its facility any parts or components with Buyer's or any of its affiliates' name, logo or trademark (or that will be responsible to affix the same), or (b) 50% percent or more of whose output from a specific location is purchased directly or indirectly by Buyer. In addition, Seller will obtain for Buyer, unless advised to the contrary in writing, written acknowledgement by such assignee, subcontractor and/or supplier to Seller of its commitment to act in a manner consistent with Buyer's integrity policies, and to submit to assessments to the same extent required of Seller pursuant to Section 7. If Seller subcontracts any part of the work under this Order outside of the final destination country where the goods purchased hereunder will be shipped, Seller shall be responsible for complying with all customs requirements related to such sub-contracts, unless otherwise set forth in this Order.

12.3. Assignment by Buyer.

Buyer may freely assign all or any part of its rights or obligations under this Order to any third party or affiliate.

13. PROPER BUSINESS PRACTICES.

Seller shall act in a manner consistent with Buyer's Integrity Guide for Suppliers and all laws concerning improper or illegal payments and gifts or gratuities and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with this Order. Further, in the execution of its obligations under this Order, Seller shall take the necessary precautions to prevent any injury to persons or to property.

14. COMPLIANCE WITH LAWS AND BUYER'S POLICIES.

In addition to the foregoing, Seller shall (and shall cause its subcontractors to) conduct its business in general and specifically with respect to the work contemplated by this Order in full compliance with all applicable (a) foreign, federal, state, provincial, and local laws and regulations in effect from time to time, including all such laws pertaining to the payment of taxes, the prohibition of corruption, protection of the environment, anti-trust and competition, and health and human safety, and (b) all industry regulations (whether or not mandated by law) applicable to the goods or services, including (as applicable) CE, VDI, TÜV, GS, and FTS. Seller further agrees at Buyer's request to provide where possible certificates confirming fulfillment of any applicable legal or regulatory requirements. Seller shall not (and shall cause its subcontractors not to) do anything that could cause Buyer to be in violation of any such laws or regulations. If any goods are to be exported from any country, Seller shall obtain all necessary export registrations and fully comply with all applicable export control laws. If Seller breaches this Section 14, Buyer may immediately terminate this Order upon written notice to Seller, without opportunity to cure.

Furthermore, the Seller agrees to comply with all guidelines, specifications and processes provided by the Buyer or made known to the Seller by the Buyer.

15. CONFIDENTIAL OR PROPRIETARY INFORMATION AND PUBLICITY.

15.1. General Obligation of Confidentiality.

Seller shall keep confidential

(a) any tangible or intangible property furnished by Buyer in connection with this Order, including any drawings, specifications, data, goods and/or information, (b) all technical, process, proprietary or economic information derived from drawings or 3D or other models owned or provided by Buyer, and (c) any other tangible or intangible property furnished by Buyer in connection with this Order, including any drawings, specifications, data, goods and/or information (the "Confidential Information") and shall not, directly or indirectly, use the Confidential Information for any purpose other than to perform the work under this Order or divulge the Confidential Information for the benefit of any other party, in each case, without Buyer's prior written consent. Confidential Information shall also include any notes, summaries, reports, analyses or other material derived by Seller in whole or in part from the Confidential Information in whatever form maintained (collectively, "Notes"). Except as required for the efficient performance of this Order, Seller shall not

use or permit copies to be made of the Confidential Information without Buyer's prior written consent. If any such reproduction is made with prior written consent, notice referring to the foregoing requirements shall be provided on each copy.

15.2. Exceptions and Required Disclosure.

15.2.1. The restrictions in this Section shall be inoperative as to particular portions of the Confidential Information disclosed by Buyer to Seller if such information: (a) is or becomes generally available to the public other than as a result of disclosure by Seller; (b) was available on a non-confidential basis prior to its disclosure to Seller; (c) is or becomes available to Seller on a non-confidential basis from a source other than Buyer when such source is not, to the best of Seller's knowledge, subject to a confidentiality obligation with Buyer, or (d) was independently developed by Seller, without reference to the Confidential Information, and Seller can verify the development of such information by written documentation prepared contemporaneously with such development.

15.2.2. If Seller is requested or required in a legal proceeding to disclose any Confidential Information, then Seller shall provide Buyer prompt notice of the request or requirement so that Buyer may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Section, and Seller agrees to cooperate, and will cause its representatives to cooperate, as reasonably requested by Buyer, in its efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded such Confidential Information. If, after such notice has been provided to Buyer, and in the absence of a protective order or other similar remedy, Seller determines, with the advice of outside counsel, that it is required to disclose Confidential Information in any response to any such request or requirement, then Seller may, without liability under this Section, disclose to the requesting person only that portion of the Confidential Information that is legally required to be disclosed.

15.3. Duties upon Termination.

Upon completion or termination of this Order, Seller shall promptly return to Buyer all Confidential Information, including any copies thereof, and shall destroy (with such destruction certified in writing by Seller) all Notes and any copies thereof.

15.4. Disclosed Information of Seller.

Any knowledge or information that Seller shall have disclosed or may hereafter disclose to Buyer and which in any way relates to the goods or services purchased under this Order (except to the extent deemed to be Buyer's property as set forth in Section 4), shall not be deemed to be confidential or proprietary and shall be acquired by Buyer free from any restrictions (other than a claim for infringement) as part of the consideration for this Order, and notwithstanding any copyright or other notice thereon, Buyer shall have the right to use, copy, modify and disclose the same as it sees fit.

15.5. Disclosure of Contractual Relationship.

Seller shall not make any announcement, take or release any photographs (except for its internal operation purposes for the manufacture and assembly of the goods), or release any information concerning this Order or any part hereof or with respect to its business relationship with Buyer, to any third party, member of the public, press, business entity, or any official body except as required by applicable law, rule, injunction or administrative order, without Buyer's prior written consent.

16. INTELLECTUAL PROPERTY INDEMNIFICATION.

16.1. Indemnification.

Seller shall indemnify and hold harmless the Indemnified Parties against any and all Losses that any of them may suffer as a result of any claim that any article or apparatus, or any part thereof, constituting goods or services furnished under this Order, as well as any device or process necessarily resulting from the use thereof, infringes any patent, copyright, trademark, trade secret or other intellectual property right of any third party.

16.2. Information Duty.

Buyer shall notify Seller promptly of any such suit, claim or proceeding and give Seller authority, information, and assistance (at Seller's expense) for the defense of same and Seller shall pay all Losses awarded therein. Notwithstanding the foregoing, any settlement of such suit, claim or proceeding shall be subject to Buyer's consent, such consent not to be unreasonably withheld.

16.3. Restoring Right of Use.

If use of said article, apparatus, part, device or process is enjoined, Seller shall, at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part, process or device, or replace the same with a non-infringing equivalent.

17. CHOICE OF LAW/FORUM.

17.1. This Order shall be governed solely and exclusively by the laws of the State of Wisconsin, U.S., without reference to the conflict of law rules thereof, and excluding the United Nations Convention for the International Sale of Goods.

17.2. Seller agrees that all actions or suits arising out of an Order shall be brought, heard and determined exclusively in either the Milwaukee County Circuit Court for the State of Wisconsin, U.S., or the United States District Court for the Eastern District of Wisconsin, U.S., and Seller consents to personal

jurisdiction and venue in such courts and waives and relinquishes all right to attack the suitability or convenience of such venue or forum. Seller waives any rights to a jury trial, as well as personal service of any process upon it in any such action or suit and consents to all such service of process made by mail or messenger directed to it at the address specified on the face of the Order. Seller agrees that all directions issued by the forum court, including all injunctions and other decrees, shall be binding and enforceable in all jurisdictions and countries.

17.3. If Seller is a permanent resident of another country or a corporation or other entity of another country other than the U.S., the parties agree to submit any dispute to settlement proceedings under the Alternative Dispute Resolution Rules (the ADR Rules) of the International Chamber of Commerce (ICC). If the dispute is not settled pursuant to the ADR Rules within 45 days following the filing of an ADR request or otherwise agreed to in writing, such dispute shall be settled under the Rules of Arbitration and Conciliation of the ICC by one or three arbitrators appointed in accordance with rules of the ICC. The place for arbitration shall be Milwaukee, Wisconsin, U.S., and proceedings shall be conducted in English. The award shall be final and binding on both parties, and the parties waive the right to appeal to any court for amendment or modification to the arbitrator's award.

18. SEVERABILITY CLAUSE.

If one or more provisions of this Order are or become invalid, the validity of the remaining provisions shall not be affected. The parties hereby agree to replace any invalid provision with a valid provision coming as close as possible to the economic purpose of the invalid provision.

19. INDEPENDENT CONTRACTORS

The relationship of the parties is that of independent contractors.

20. FORCE MAJEURE

Neither party will be liable to the other for any Loss or delay suffered or incurred by the other party due to strikes, lockouts, accidents, fire, embargoes, explosions, floods, hurricanes, earthquakes, war, governmental action or any other cause similar thereto that is beyond the reasonable control of the first party, and any failure or delay by a party in the performance of any of its obligations under this Order will not be considered a breach due to, but only so long as there exists, one or more of the foregoing causes. In the case of any delay or failure that a party anticipates will cause an excusable delay hereunder, such party will inform the other party by written notice of the anticipated effect of such delay within ten days of becoming aware of such delay or failure, the written notice to include the steps that the notifying party is taking to alleviate the problem. If the event is suffered by Seller and is not alleviated to the reasonable satisfaction of Buyer within 30 days, then Buyer may immediately terminate this Order upon written notice to Seller, without opportunity to cure.

21. MISCELLANEOUS PROVISIONS

These terms and the Order and any documents incorporated by reference, are intended as a complete, exclusive and final expression of the parties' agreement with respect to the subject matter hereof, and supersede any prior or contemporaneous agreements, whether written or oral, between the parties with respect to such subject matter. No supplement, modification, amendment or waiver of this Order will be binding unless executed in writing by the parties. No waiver of any of the provisions of this Order will be deemed or constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. Failure of either Party to enforce any provision herein shall not be construed to be waiver of such provision or right of such party to enforce each and every provision. Buyer's rights and remedies under these terms are in addition to any remedies provided by law, contract or equity. Section headings shall not be given effect in interpretation of these terms. The term "including" shall be construed as "including, but not limited to" or "including, without limitation", unless expressed otherwise. All provisions contained herein required or intended to be performed after termination or expiration of these terms and the Order shall remain binding upon and for the benefit of the parties, their successors and permitted assigns, until satisfied in full. Except for the Indemnified Parties, each of which is an intended third-party beneficiary of this Order, no third party may exercise any right hereunder.

