

PURCHASE CONTRACT

- 1. Acceptance.** This Purchase Contract (the "Contract") shall become a binding contract when the first of the following events occurs: Seller signs and returns it; or, SELLER RETAINS IT WITHOUT GIVING BUYER WRITTEN NOTICE OF ANY OBJECTION TO IT WITHIN TEN DAYS AFTER SELLER RECEIVES IT; or, Seller issues any instructions to Buyer; or, Seller makes delivery of any goods covered by it.
- 2. Delivery.** All goods ordered under this Contract shall be delivered by Seller during normal business hours to the location Buyer has designated in this Contract. Shipment shall be made by such carriers as Buyer has specified herein, or by the most economical common carrier available. All goods shall be packed by Seller in suitable containers, boxes and/or crates to assure the protection of the goods against any loss or damage in shipment and storage. The purchase prices set forth on the face of this Contract shall include all charges for such packing and crating. All risk of loss shall be that of Seller until arrival of the goods at the place of delivery indicated on the front of this Contract. Any losses occurring from deviation from Buyer's routing instructions shall be for the account of Seller.
- 3. Time of Essence.** Time is of the essence of this Contract. If deliveries are not made at the time agreed upon, Buyer reserves the right to cancel this Contract and the right to hold Seller liable for any resulting damage or loss of whatever nature.
- 4. Notice of Delay.** If a delivery date cannot be met, Seller shall inform Buyer in writing immediately. Buyer may terminate this Contract if the delay is unacceptable by notifying Seller in writing within ten days of the receipt of Seller's notice.
- 5. Rescheduling Delivery.** Buyer may reschedule any delivery of goods for a date not more than three months after the delivery date stated in this Contract; provided, however, that Buyer must provide Seller with written notification of any such change in delivery date not fewer than thirty days prior to the delivery date specified in the Contract.
- 6. Seller's Warranties.** Seller warrants that all services rendered or goods delivered to Buyer hereunder will conform to the applicable specifications, drawings, samples or other descriptions given and shall be fit and sufficient for the purpose intended, and that all goods will be merchantable, of good material and workmanship and free from defects. Seller expressly warrants that all goods sold hereunder shall be free from defects in workmanship and material from the date of delivery to Buyer until one hundred eighty days after sale to the first end-user of the goods. These warranties shall be in addition to any other warranties, whether implied or otherwise, that shall apply to the goods, and all warranties shall survive any inspections, payments and acceptances by Buyer. All warranties of Seller shall run in favor of Buyer, its successors, assigns, dealers, customers, customers of its dealers and the owners and end-users of the goods.
- 7. Inspection.** Buyer may inspect all goods at the plant, warehouse or other storage area used by Seller. Final inspection and approval will be at the premises of Buyer, or such other place as Buyer may specify. In the event that any goods delivered to Buyer are in any manner nonconforming or defective, Buyer may, in addition to exercising any other remedies that it may possess under this Contract or by law: (a) return the defective goods to Seller at Seller's expense; (b) require Seller to replace the nonconforming or defective goods; or (c) dispose of the goods in whatever manner it may choose. Buyer shall not be required to accept or make payment for any delivery of goods unless such delivery is of the number and quality of goods ordered herein. Buyer may waive this right only in writing.
- 8. Modification.** Buyer may make changes in quantities, delivery schedules, or methods of shipments or packaging on any good at any time by notifying Seller in writing. If within twenty days from the date of receipt by Seller of the notification of change, Seller shall in writing make claim to Buyer that such change causes an increase or a decrease in cost of, or the time required to perform, this Contract, an adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly. If agreement to an adjustment cannot be reached, Buyer may terminate this Contract.
- 9. Indemnification.** Seller shall indemnify Buyer and its directors, officers, employees, affiliates, agents, successors and assigns, from and against any and all actions, claims, suits, proceedings, losses, liabilities and related costs and expenses (including reasonable attorneys' fees) incurred by or asserted against Buyer or any such party arising out of or in any manner related to (a) this Contract; (b) Seller's performance or failure to perform any of its obligations hereunder; (c) any of the goods sold under this Contract, including but not limited to any defects in such goods; and (d) any accident, injury or loss to or of any person or property caused by the goods sold under this Contract or the items or end products into which the goods are incorporated.
- 10. Evidence of Shipment.** Seller shall forward to Buyer, with its invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made.
- 11. Seller's Assignment Prohibited.** This Contract may not be assigned, delegated or otherwise transferred by Seller without the prior written consent of Buyer, and any such assignment, delegation or transfer without such prior written consent shall be null and void and of no force or effect whatsoever.
- 12. Buyer's Attorneys Fees.** If Buyer is required to engage the services of an attorney to enforce its rights or realize benefits under this Contract, whether or not a lawsuit is filed, Seller shall be liable for all such fees and related expenses actually incurred by reason of such engagement, and shall make payment therefor within ten days after demand from Buyer.
- 13. Severability.** The invalidity, in whole or in part, of any provision of this Contract shall not affect the validity or enforceability of any other of its provisions.
- 14. Notices.** Any notice or other communication required or permitted under this Contract shall be sufficiently given if sent in writing by United States mail, first class postage prepaid, and addressed to the other party hereto at its respective address. Any such notice, if so mailed, shall be deemed to have been received on the second business day following such mailing, regardless of when or whether received. Either party hereto may change its address for notice purposes by written notice to the other party.
- 15. Nonwaiver.** Buyer's failure to insist, in one or more instances, upon the performance of any term or terms of this Contract shall not be construed as a waiver or relinquishment of Buyer's right to such performance or the future performance of such term or terms, and Seller's obligation with respect thereto shall continue in full force and effect.
- 16. Entire Agreement.** This Contract embodies the entire agreement and understanding between the parties, is intended as a complete and exclusive statement of the terms of the agreement between the parties, and supersedes any prior contract, orders, agreements or understandings between the parties relating to the subject matter hereof. No change in, modification of, or addition to the terms and conditions contained herein shall be binding on Buyer unless set forth in a writing which is signed by an authorized representative of Buyer.
- 17. Governing Law.** This Contract has been made in, and its interpretation and performance shall be governed by, the laws of the State of California. The parties consent to the jurisdiction over each of the courts of the State of California. Either party may file any legal action brought under this Contract in the County of Los Angeles.