

**THE COLD HEADING CO.
TERMS AND CONDITIONS OF PURCHASE**

1. **Offer; Acceptance.** This purchase order ("Order"), including the face of the purchase order, any continuation sheet, and these Terms and Conditions of Purchase ("Terms"), is an offer to Seller by The Cold Heading Co. or its affiliates ("Buyer") for the purchase of goods and/or services ("Supplies"). This Order does not constitute an acceptance of any offer or proposal made by Seller and supersedes all prior agreements, orders, quotations, proposals and other communications regarding the Supplies covered by the Order. Any reference in this Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in this Order. Seller's written acceptance, Seller's commencement of any work under this Order or any other conduct by Seller that recognizes the existence of a contract with respect to the subject matter of this Order constitutes Seller's acceptance of these terms and conditions and these terms and conditions only. **This Order is limited to and conditional upon Seller's acceptance of these Terms exclusively.** Any additional or different terms and conditions proposed by Seller, whether in Seller's proposal form, acknowledgement form, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, shall not become part of this Order, but shall not operate as a rejection of this Order if Seller accepts Buyer's offer by commencement of work, shipment of the Supplies, or by other means acceptable to Buyer, in which case this Order shall be deemed accepted by Seller without any additional or different terms or variations whatsoever. **THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE.** These Terms prevail over any of Seller's general terms and conditions of sale regardless of whether or when Seller has submitted its sales confirmation or such terms. In the event of any conflict between the face of this Order (including any continuation sheet) and these Terms, the face of the Order shall govern.

2. **Invoicing and Pricing.** The price of Supplies includes, as applicable, storage, handling, packaging, freight, insurance, transportation, and all other expenses, costs and charges of Seller, unless Buyer agrees otherwise in writing in this Order. All invoices under this Order must reference the purchase order number. The total price includes all freight, duty and tax, except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Seller's invoice for each shipment, and Buyer shall not be liable for any business activity taxes or taxes on or measured by net income. Prices are not subject to increase, unless specifically stated in the Order, and Seller assumes the risk of any event or cause affecting prices, including without limitation, foreign exchange rate changes, increases in raw material costs, inflation, increases in labor and other production and supply costs, and any other event which impacts the price or availability of materials or supplies.

3. **Delivery; Packaging.** (a) Delivery of Supplies shall be F.O.B. Buyer's location and risk of loss shall pass from Seller to Buyer upon delivery to Buyer, unless otherwise agreed to in writing by the Buyer. (b) Seller shall deliver the Supplies in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties. If no delivery date is specified, Seller shall deliver the Supplies within ten (10) days of Seller's receipt of the Order. Time is of the essence under this Order. The Seller agrees to 100% on-time delivery of the quantities and at the times specified by Buyer, as set forth in this Order, unless otherwise negotiated and agreed in writing by the parties. Buyer may change the schedule from time to time. If Seller fails to deliver the Supplies in full on the required delivery date, Buyer may terminate its Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages and reasonable costs and expenses attributable, directly or indirectly, to Seller's failure to deliver the Supplies on the required delivery date. (c) Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. Buyer has the right to return any Supplies delivered prior to the required delivery date at Seller's expense and Seller shall redeliver such Supplies to Buyer on the required delivery date. (d) Seller is responsible for and shall pay premium freight costs over normal freight if an expedited shipping method is required to meet agreed upon delivery dates due to Seller's acts or omissions. (e) Buyer will not be liable for premium freight, unless specifically authorized and agreed to in advance, in writing, by Buyer. (f) Buyer will not reimburse the Supplier for any additional costs incurred without prior approval in writing from Buyer. (g) Shipments must equal exact amounts ordered unless otherwise agreed in writing by Buyer. Partial shipment shall not be accepted unless otherwise specially agreed in writing by Buyer. Buyer assumes no obligation with respect to goods shipped in excess of quantities specified in the Order(s). Material shipped in excess of the quantity ordered may be returned at Seller's expense. (g) Seller agrees to: (i) properly pack, mark and ship Supplies in accordance with the requirements and instructions of Buyer, the involved carriers and the country of destination and otherwise in a manner sufficient to ensure that the Supplies are delivered in undamaged condition, (ii) route the shipments in accordance with 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 receipt for each shipment in accordance with Buyer's instructions and carrier requirements. Seller will promptly provide Buyer with the following information in the form requested: (i) a list of all ingredients and materials in Supplies, (ii) the amount of all ingredients, and (iii) information concerning any changes in or additions to the ingredients.

4. **Delay.** If Seller does not deliver Supplies timely in accordance with the requirements of this Order, Seller understands that Buyer's work will be disrupted and delayed, and (subject to Section 16 below (force majeure)) Seller will be responsible to Buyer for any and all damages sustained as a result.

5. **Payment.** Payment shall be made as set forth in the Order. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. If not otherwise specified, Buyer's payment will be made on day 60 following of the later of delivery of the Supplies under the Order and receipt by Buyer of a conforming invoice covering such Supplies (Net 60 days). (In the case of services, delivery means the completion of the services.) Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances or claims on Supplies provided under the Order. Payment will be made in the currency expressly stated in the Order; if no such currency is noted, payment will be made in U.S. Dollars. Payment will be made by mailing on or before the due date unless otherwise expressly agreed by Buyer. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

6. **Changes.** (a) Buyer reserves the right at any time to direct changes, or cause Seller to make changes, to the Supplies covered by this Order, and Seller agrees to promptly make such changes. Any such changes shall be deemed not to affect time for performance or cost unless Seller notifies Buyer in writing within ten (10) days after mailing or other transmission of such order in writing, and in the case of such notification, any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. Such adjustment, if any, will constitute Seller's sole remedy on account of such change. (b) Seller will not make any change in the Supplies, including, without limitation, design, drawings, specifications, materials, processing, packing, marking, shipping, or date or place of delivery except at Buyer's written instruction or with Buyer's written approval. Any changes by Seller to any Order or to the Supplies covered by the Order without the prior approval of Buyer's authorized representative shall constitute a breach of the Order. Notwithstanding the foregoing, if Seller learns of a possible change that may reduce costs, improve quality or otherwise be beneficial to Buyer, Seller will inform Buyer of the possible change.

7. **Inspection; Non-Conforming Goods/Services; Information.** (a) Buyer may enter Seller's facility to inspect the facility, Supplies, materials, and any of Buyer's property covered by this Order. (b) Buyer, at its sole option, may reject all or any portion of the Supplies if it determines the Supplies are nonconforming or defective. If Buyer rejects any portion of the Supplies, Buyer has the right, effective upon written notice to Seller, to: (i) rescind its Order in its entirety; (ii) accept the Supplies at a reasonably reduced price; or (iii) reject the Supplies and require replacement of the rejected Supplies. If Buyer requires replacement of the Supplies, Seller shall, at its expense, immediately replace the nonconforming or defective Supplies and pay for all related expenses, including, but not limited to, transportation charges for the return of the applicable Supplies and the delivery of replacement Supplies. If Seller fails to timely deliver replacement Supplies, Buyer may replace them with goods or services from a third party and charge Seller the cost thereof. (b) Buyer's inspection of Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection or failure to inspect does not relieve Seller of any of its responsibilities or warranties or limit Buyer's rights and remedies hereunder and under applicable law. Nothing in this Order releases Seller from the obligation of testing, inspection and quality control. (c) Payment for nonconforming Supplies is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller of its responsibilities or warranties hereunder (including without limitation for defects, latent or otherwise). (d) Seller will at all times keep Buyer fully informed concerning the status of this Order and Seller will bear any expenses necessary for giving such information to Buyer.

8. **Warranties.** Seller expressly warrants/guarantees to Buyer and its customer(s) that all Supplies to be delivered to the Buyer under this Order shall: (i) conform to all applicable specifications, standards, drawings, or descriptions; (ii) conform to any applicable laws, orders, regulations or standards as well as end-users' reasonable expectations; (iii) be merchantable and free of defects in design (to the extent that Seller furnished the design in whole or in part, even if the design has been approved by Buyer), materials and workmanship; (iv) be selected, designed (to the extent that Seller furnished the design in whole or in part, even if the design has been approved by Buyer), manufactured or assembled by Seller based upon Buyer's intended use and be fit and sufficient for the purposes intended by Buyer, (v) not contain any ingredient or component that are or may become harmful to persons or property, and (vi) be free of all liens, claims and encumbrances whatsoever. Seller warrants that Supplies sold hereunder shall not infringe or misappropriate any patent, trade mark, design and other industrial, intellectual property or proprietary rights of a third party in any country. Seller shall also obtain, and at all times during the term of the Order, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Supplies; comply with all rules, regulations and policies of Buyer, including security procedures and safety practices; maintain complete and accurate records relating to the provision of the Supplies, including records of the time spent and materials used by Seller in providing the Supplies in such form as Buyer shall approve (it being understood that during the term of the Order and for a period of two (2) years thereafter, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Supplies); obtain Buyer's written consent prior to entering into any agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Supplies to Buyer (it being understood that Buyer's approval shall not relieve Seller of its obligations under the Order and Seller shall remain fully responsible for the performance of such persons and entities as if such performance were made by Seller); ensure that all persons, whether employees, agents, subcontractors or anyone acting for or on behalf of the Seller are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to provide the Supplies; ensure that all of its equipment used in the provision of the Supplies is in good working order and suitable for the purposes for which it is used and conforms to all relevant legal standards and standards specified by the Buyer; and keep and maintain any Buyer equipment and tooling (including Buyer's Property, as defined below) in its possession in good working order. To the extent the Supplies include services, Seller shall perform such services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. If there is a conflict between any of the requirements and/or standards referenced above, the provisions that require higher quality shall control. To the extent any such requirements and/or standards are amended, supplemented and/or replaced, Seller's obligations will be automatically amended to conform to such amended requirements and/or standards. The foregoing warranties are in addition to those available to Buyer by law.

9. **Remedies.** The rights and remedies reserved to Buyer in this Order shall be cumulative with, and additional to, all other or further remedies provided in law or equity. Without limiting the foregoing, should any of the Supplies fail to conform to the warranties set forth in Paragraph 8, or should Seller otherwise fail to comply with or breach any of Seller's representations or warranties in this Order or any of the terms and conditions of this Order, or in the event of any other negligent or wrongful act or omission of Seller, Seller's agents, employees or subcontractors, Buyer shall notify Seller and Seller shall, if requested by Buyer, reimburse Buyer for any incidental or consequential or other damages caused thereby. Buyer's recoverable damages include, among other matters, attorney fees and other professional fees, lost profits, lost revenue, costs of containment, sorting, repair, replacement, cure, cover, recalls and associated campaigns, corrective service actions, settlements and judgments incurred by Buyer and other costs associated with Buyer's administrative time, labor and materials. In addition, if Buyer gives Seller notice of noncompliance,

Seller shall, at its own cost and expense, immediately replace or repair the defective or nonconforming Supplies and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Supplies to Seller and the delivery of repaired or replacement Supplies to Buyer and, if applicable, repair or reperform the applicable services.

10. **Service Requirements; Supply Shortages and Safety Stock.** During the period in which Buyer uses certain Supplies in production of Buyer products and/or services and for ten (10) years thereafter ("Service Period"), Seller will sell Supplies to Buyer to fulfill Buyer's requirements. Unless otherwise agreed in writing by the Buyer, the prices for the Supplies during the Service Period will be the prices that were in effect at the time Buyer first purchased the applicable Supplies from Seller. If Seller's ability to deliver any Supplies is or is reasonably likely to be constrained, Seller shall immediately notify Buyer of such constraints and shall use best efforts to resolve the applicable issue. Seller will build and maintain at all times during the Service Period a safety stock of Supplies at an agreed location at no additional charge to Buyer that consists of a quantity sufficient to meet at least two (2) months of deliveries under Buyer's Orders. Seller will retain title to, and Buyer will not have any obligations for, such safety stock until it is delivered in accordance with Buyer's Orders.

11. **Indemnification.** To the fullest extent permitted by applicable law, Seller shall defend, indemnify and hold harmless Buyer and its subsidiaries, affiliates, successors and assigns and their respective directors, officers, equity holders and employees (each, an "Indemnitee"), against all losses, claims, actions, judgments, interest, awards, penalties, fines, damages, claims or liabilities and expenses (including attorneys fees and other professional fees, settlements and judgments) arising out of or resulting in any way from the Supplies purchased hereunder, or from any negligent or wrongful act or omission of Seller, its agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations, warranties or other terms and conditions of this Order (including any part of these Terms) or any claim that an Indemnitee's use or possession of the Supplies infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller's obligation to defend, indemnify and hold harmless under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise, except for claims that arise as a result of the sole negligence of Buyer.

12. **Insurance.** During the term of the applicable Order and for two (2) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum not less than \$1,000,000 combined single limit per occurrence for bodily injury and/or property damage, as well as contractual liability coverage, with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Buyer as an additional insured. The certificate will provide that Buyer will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under an Order.

13. **Technical Information and Ownership.** (a) Unless otherwise agreed to in writing by the Buyer: (i) no information disclosed in any manner at any time by Seller, or Seller's contractors, to Buyer, or Buyer's Customers, will be treated as confidential, and (ii) Seller agrees not to assert any claim against Buyer, Buyer's Customers or their respective suppliers, with respect to any information that Seller, or Seller's contractors, have disclosed or may disclose to Buyer, or Buyer's Customers, in connection with the Supplies. (b) Seller may not release or disclose Buyer's Property (as defined below) to any third party or use Buyer's Property in any way that is detrimental to Buyer without the express written permission of Buyer. All information, materials, data, works of authorship, inventions, improvements, and intellectual and proprietary property (including without limitation tooling, jigs, dies, gauges, fixtures, molds, patterns and equipment) delivered by Buyer to Seller, accessed by Seller or created, developed or acquired by or on behalf of Seller in connection with Seller's performance under the Order, along with all intellectual property rights relating thereto, are the sole and exclusive property of Buyer ("Buyer's Property"). Seller will promptly disclose in an acceptable form and assign to Buyer all such Buyer's Property. To the extent that any works of authorship (including, without limitation, software) are included within Buyer's Property, such works shall be considered "work made for hire". To the extent that such works do not qualify as "work made for hire," Seller hereby assigns to Buyer all right, title, and interest in all copyrights and moral rights therein. Such works are also included in Buyer's Property as used herein. Seller hereby grants to Buyer, Buyer's affiliates and Buyer's respective successors and assigns, and Buyer hereby accepts, a non-exclusive, irrevocable, perpetual, royalty-free, fully paid up worldwide license, including the right to sublicense to others, under any intellectual property rights owned or controlled by Seller or its Affiliates and relating to the Supplies, to make, have made, repair, reconstruct, rebuild, relocate, use, sell and import the Supplies and under any works of authorship (including drawings, prints, manuals, specifications, etc.) furnished by Seller in the course of Seller's performance to reproduce, distribute and display such works and to prepare derivative works based thereon. The foregoing license is a license to rights in "intellectual property" for purposes of Section 365(n) of the United States Bankruptcy Code and is supplementary to any other rights of Buyer under these Terms and any other agreement with Seller.

14. **Compliance with Laws.** Seller, and any Supplies supplied by Seller, shall comply with all applicable laws, rules, regulations, orders, codes, conventions, ordinances or standards that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Supplies, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination and occupational health/safety. This Order incorporates by reference all clauses required by these laws and regulations. All materials used by Seller in the Supplies or in their manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Before and at the time the Supplies are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers and packing, together with disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous material that is an ingredient or part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer and their employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using or disposing of the Supplies, containers and packing.

15. **Termination**

a) This Order may be terminated immediately by Buyer without liability to Seller in the event of any of the following and Seller shall reimburse Buyer for all costs and damages incurred by Buyer in connection with any of the following, including but not limited to all attorney and other professional fees: (a) Seller becomes insolvent, (b) Seller files a voluntary petition in bankruptcy, (c) an involuntary petition in bankruptcy is filed against Seller, (d) a receiver or trustee is appointed for Seller, (e) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under this Order, (f) Seller executes an assignment for the benefit of creditors, or (g) Seller repudiates or threatens to breach any of the terms of this Order, or fails to provide timely adequate assurance of performance upon request by Buyer.

b) Buyer may terminate all or any part of this Order or any other Order or agreement between Buyer or Buyer's affiliate(s) and Seller or Seller's affiliate(s)), without liability to Seller and Seller's affiliate(s), if Seller breaches any of the terms and conditions of the Order and does not correct the failure or breach within five (5) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying the failure or breach.

c) Seller may terminate the Order only for non-payment of the purchase price for Supplies which are thirty (30) or more days past due and material in amount, and then only if: (1) Seller first provides Buyer written notice specifying the amounts past due (including the relevant Order and invoice numbers and date) and Seller's intent to terminate the Order if the past due amount is not paid; and (2) Buyer, within sixty (60) days of such notice, does not either: (A) pay the past due amounts, or (B) notify Seller that the amounts claimed to be unpaid are disputed by Buyer. Seller may not terminate or cancel the Order for any reason except as permitted under this Section. Seller may not suspend performance of the Order for any reason.

d) In the event of termination by Buyer, Seller shall immediately stop all work under this Order and observe any instructions from Buyer as to work in progress. Among other matters, upon receipt of and consistent with such notice of such termination, and unless otherwise directed by Buyer, Seller will: (i) terminate promptly all work under the Order on the effective date of termination, (ii) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials which Seller reasonably produced or acquired according to the quantities ordered by Buyer and in accordance with the terms and conditions of the Order and which Seller cannot use in producing goods for itself or for others, (iii) verify and settle any claims by subcontractors for actual costs incurred directly and made unrecoverable by the termination and ensure the recovery of materials in subcontractor's possession, (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received, and (v), if applicable and upon Buyer's request, cooperate with Buyer in transferring production of Products to a different supplier as may be further described in an Order.

e) Buyer may also terminate an Order for convenience upon written notice to Seller, provided that, upon such termination becoming effective, Buyer will be obligated to pay Seller only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the requirements of the Order and for which Seller has not been paid, (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer in accordance with subsection 15 (d)(ii) above, (iii) Seller's reasonable actual costs of settling regarding its obligations to subcontractors required under the Order, to the extent directly caused by termination, but limited to the amount of any firm quantities of Supplies and raw materials / components specified in related material releases issued by Buyer and then outstanding; (iv) Seller's reasonable actual cost of carrying out its obligation under subsection 15(d)(iv), and (v), if applicable, amounts due in connection with transition support under subsection 15(d)(v). Notwithstanding any provision to the contrary, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts that exceed those authorized in the Material Authorization Releases, or general administrative burden charges from termination of the Order, unless otherwise expressly agreed to in writing by Buyer in a separate Order issued by Buyer. Buyer's obligation upon termination under this Section 15 shall not exceed the obligation Buyer would have had to Seller in the absence of termination. Seller will furnish to Buyer, within one (1) month after the date of termination covered by this subsection 15(e), its termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection 15(e) above. Buyer may audit Seller's records before or after payment to verify amounts requested in Seller's termination claim.

f) Buyer will not have any obligation under subsection 15(e) above if Buyer terminates Buyer's obligations under the Order because of a default or breach by Seller (e.g., under Section 15(a), (b) or (c)), and any termination shall be without prejudice to any claims which Buyer may have against Seller. Upon any termination of an Order, Seller shall take all action reasonably necessary to protect property in Seller's possession in which Buyer has an interest (including Buyer's Property) until disposal instructions from Buyer have been received. Further, if requested by Buyer, Seller shall transition supply to a successor supplier and fully cooperate in such transition, including the following: (i) continue production and delivery of Supplies as ordered by Buyer in accordance with these Terms during the period reasonably needed by Buyer to complete the transition to the alternate supplier(s); (ii) at no cost to Buyer, promptly provide all requested information and documentation regarding and access to Seller's manufacturing process used to provide the Supplies; and (iii) subject to Seller's actual capacity constraints, provide special overtime production, storage and/or management of extra inventory of Supplies, packaging and transportation and other special services as expressly requested by Buyer.

g) The rights and obligations of the parties under Sections 7, 8, 9, 10, 11, 12, 13, 14, 15(d), (e) and (f), 17, 18, 19 and 20 shall survive any termination or expiration of this Agreement.

16. **Force Majeure.** Any delay or failure of either party to perform its obligations shall be excused if, and to the extent, that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as acts of God, actions taken by any governmental authority (whether valid or invalid), embargoes, fires, floods, riots, natural disasters, wars, or sabotage; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party as soon as possible after the occurrence (but in no event more than ten (10) days thereafter). Seller's inability to perform as a result of, or delays caused by, Seller's insolvency or lack of financial resources is deemed to be within Seller's control. The change in cost or availability of materials or components based on market conditions or supplier actions will not constitute force majeure. During the period of such delay or failure to perform by Seller, Buyer, at its option, (i) may purchase Supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or (ii) acquire possession of all

finished goods, work in process and parts and materials produced or acquired for work under the Order, and Seller will deliver such articles to Buyer at Buyer's expense. Notwithstanding the foregoing, Buyer may terminate all or any part of an Order immediately upon written notice to Seller if Seller's performance is delayed due to force majeure for a period of fifteen (15) days or more.

17. **Non-Assignment.** Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility and obligations under this Agreement, including, without limitation, for Supplies and all related warranties and claims, unless otherwise expressly agreed in writing to Buyer.

18. **Governing Law.** Each Order is to be construed according to the laws of the State of Michigan and the United States excluding (a) the provisions of the United Nations Convention on Contracts for the International Sale of Goods and (b) any conflict of laws provisions that would require application of another choice of law.

19. **Severability.** If any term of this Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of this Order shall remain in full force and effect.

20. **Entire Agreement; Modifications; No Implied Waiver; Arbitration.** (a) Except as otherwise expressly set forth in the Order, including these Terms, this Order constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Order and supersedes all prior oral or written representations and agreements with respect thereto. This Order may only be modified by a written amendment executed by authorized representatives of each party or, in the case of changes within the scope of Section 6, a purchase order amendment or equivalent document or written direction issued by an authorized representative of Buyer. (b) The failure of either party at any time to require performance by the other party of any provision of this Order shall in no way affect the right to require performance at any later time, nor shall the waiver of either party of a breach of any provision of this Order constitute a waiver of any later breach of the same or any other provision of this Order. (c) Buyer and Seller consent to the exclusive jurisdiction of the state or federal courts located in Michigan to resolve any claim or controversy arising from or in any manner related to the transactions documented in this Agreement.

(7/20/17)