

Welcome to the web site hosted by Tube Fab/Roman Engineering: www.tubefab.org. Thank you for reviewing the purchase order that has been transmitted to you. The terms and conditions detailed below are incorporated into our purchase order, and by accepting the purchase order you agree that you have read, understand, and are bound by these terms and conditions. In view of our common goals and objectives of consistently delivering high quality products to our customers, we both agree that the following terms and conditions govern the purchase and delivery of parts, goods, materials and services from you.

PURCHASE ORDER TERMS AND CONDITIONS

These terms and conditions (these "Terms") are issued on behalf of Tube Fab/Roman Engineering (which, unless the context otherwise makes clear, will be referred to as "us," "our" or "we" in these Terms). These Terms will apply to all purchase orders issued to you as the seller for parts, goods, materials, deliverables and services ("Products"), whether mailed, faxed or electronically transmitted to you, and will be valid without your signature. We may revise these Terms from time to time and post the revisions on this web site, so you are encouraged to check this site for changes. If we do make changes, they will apply to all blanket purchase orders and bind both you and us even made if after the effective date shown on a purchase order.

1. Acceptance.

1.01 Applicable Terms. Any purchase order we issue is our offer limited to the terms shown on our purchase order and these Terms. Our issuance of a purchase order is not an acceptance of any offer to sell or quotation you may have provided to us. If we reference your proposal or quotation in our order, it is solely for the purpose of incorporating the description and specifications of the Products ordered to the extent that such description and specifications do not conflict with the description and specifications on the purchase order we issue. Unless we otherwise expressly agree in a signed writing for that purpose, our electronic signature will not constitute acceptance of your terms and conditions.

1.02 Formation of Contract. Any conduct by you that recognizes the existence of a contract pertaining to the subject matter of a purchase order will constitute your acceptance of our purchase order and all of these Terms. All terms or conditions proposed in your acceptance of this offer that add to, vary from or conflict with any of these Terms are deemed to be material and are hereby objected to and rejected. If our purchase order is deemed an acceptance of your prior offer, then our issuance of a purchase order will constitute an acceptance of such offer *subject to the express condition* that you agree to any of these Terms that are additional to or different from any terms and conditions in your offer. You acknowledge that our purchase order, together with these Terms, constitutes the entire agreement between us with respect to the subject matter of such purchase order, and that we would not buy the Products from you if our purchase order and these Terms did not exclusively govern the transaction. In order to expedite our transactions, you will be deemed to have so agreed and acknowledged (i) unless you expressly notify our Supply Chain Manager to the contrary in writing within five (5) days of your receipt of our purchase order or (ii) once you commence work under the order. Except for general revisions to our Terms we may make from time to time, any change to or waiver of any of these Terms binds us only if it is in a separate writing signed by a corporate officer or our Supply Chain Manager.

1.03 Blanket Order. We may issue a blanket purchase order for a certain percentage of our needs over an extended period of time. For blanket purchase orders, quantities listed in each order as estimated represent our best estimate of the quantities of Products we might purchase from you for the contract term specified in such order, based upon estimates we receive from our customers. If no quantity is stated or if the quantity is stated as zero: (a) you are obligated to supply our stated requirements for the Products in quantities we specify in releases; (b) unless expressly stated on the face of the order, we are not required to purchase Products exclusively from you; and (c) we will not be required to purchase any more than those quantities of Products identified as firm orders in releases that we transmit to you.

2. Purchase and Sale.

2.01 Purchase of Products. You will provide the Products as shown on our purchase order. If no quantity is indicated, we will issue releases to specify the quantities and types needed and delivery locations, times and dates. The releases will indicate the extent to which we are committed to make purchases from you (subject to our right to terminate).

2.02 Forecasts. We may provide you with estimates, forecasts or projections of our future volume or quantity requirements for the Products which are for informational and planning purposes only and are not binding on us. We are unable to make any representations or commitments of any kind or nature, express or implied, regarding any volume projections, as quantities are dictated by the needs of our customers.

3. Changes. We may change our purchase order for the Products at any time without penalty, but with written notice to you. Some examples of these include changes to quantities, destinations, specifications, drawings, designs, or delivery schedule. You will make all

changes we request. You may not make any changes on your own without first obtaining our consent in writing. You will promptly notify us in writing if a change will significantly affect cost or time for performance, and if you seek an adjustment in cost or time of performance as a result of such change, you will provide substantiation for your claim within ten days or any shorter time period specified by our customer. It is your responsibility to inquire about the applicable deadline. Based on our customer's approach, we will equitably determine any adjustment in price or time for performance resulting from such change after receipt of documentation from you in such form and detail as may be required.

4. Prices.

4.01 Prices. Our purchase order will show the applicable prices which, unless otherwise stated in the purchase order, will be held firm during the period covered by our purchase order. Because prices to our customers are firm as well, we are unable to agree to any increases for material or other costs, although under special circumstances we may be willing to convey such a request to our customer and explain those special circumstances. Notwithstanding the prices set forth on our purchase order, if your established price for any item upon the date of delivery will be lower than the price shown on this order, you will afford us the benefit of such lower price. We will also receive the full benefit of all discounts, rebates, and other favorable terms of payment customarily offered by you to your customers.

4.02 Price Warranty. You may not supply against any purchase order Products priced higher than those last quoted or agreed upon without our prior specific written authorization, which must be included with your invoice. We reserve the right to cancel and return to you at your cost any Products where the price has been increased without our prior written approval. You warrant that the prices for the Products sold to us under any purchase order are not less favorable than those currently extended by you to any other customer for the same or like Products in equal or less quantities.

4.03 Currency. Unless otherwise expressly agreed, the price stated in our purchase order will be in United States currency and will include (i) all applicable taxes and duties, tooling and transportation charges, and (ii) charges for boxing, packaging, crating, carting, or storage.

4.04 Invoicing and Discounts. You are not entitled to invoice us for the Products until we have accepted delivery. If the terms of our purchase order entitle us to a discount, the discount period will begin on the later of the date the invoice is received by us or the date we take delivery of the Products. If an adjustment in pricing is necessary for any reason, then the cash discount period will commence on the date we receive a corrected invoice.

5. Shipping, Packaging and Delivery.

5.01 Choice of Carrier. We will have the right to specify the carrier and the method of transportation to be used to ship any Products. A packing slip will accompany each shipment. If no such slip is forwarded, the count or weight made by us will be conclusive.

5.02 Time of the Essence. Time and quantity of delivery or rendering of Products is of the essence in order for us to meet delivery schedules to our customers. Therefore, you are required to achieve 100% on time delivery and quantity performance. Deliveries will be made during regular business hours in the quantities we specify unless we otherwise notify you. We will not be required to make payment for Products delivered to us that are in excess of quantities specified in our delivery schedules, and at our option, we may notify you to make immediate arrangements, at your cost, for the return of excess quantities of Products.

5.03 Completion of Delivery. Delivery will not be deemed to be complete until we actually receive and accept the Products. Whenever you have knowledge that delivery may be delayed, you will immediately give us written notice, even if the original delivery date was only an estimate. Acceptance of any part of an order will not bind us to accept future shipments or deprive us of the right to return Products already accepted.

5.04 Title and Risk of Loss. Except in the instance where we have paid for Products in whole or part in advance of delivery, in which case title to such Products will pass to us at the time of identification of the Products to our order, title and risk of loss will remain with you until you have delivered the Products in a completed state at the location specified on our purchase order. You will bear the cost of any return shipments that are required, with title and risk of loss passing to you upon our delivery to a carrier.

5.05 Failure to Make Delivery. If your acts or omissions result in your failure (or a potential failure) to meet our delivery requirements, we may require a more expeditious method of transportation for the Products than the transportation method originally specified. You will then, at our request (but without limiting our other remedies), (i) promptly reimburse us the difference in cost between the more expeditious method and the original method, (ii) allow us to reduce payment of your invoices by such difference, (iii) ship the Products as expeditiously as possible at your expense and invoice us for the amount, if any, that we would have paid for normal shipment, or (iv) pay any increased amounts we were required to pay to buy the Products from another supplier.

5.06 Customer Charges. If you fail to deliver the Products on time, it is likely our performance to our customers (and their customers) will be delayed, which may cause additional and substantial damages. In that event, you will be responsible for any and all amounts we are required to pay to our customer(s) attributable to your delay as well as any other damages that may result.

6. Delivery of Nonconforming Products.

6.01 Delivery; No Inspection. You will deliver only Products that conform in all respects to the requirements of a purchase order and these Terms. Although we are not required to do so, we or our representatives or customers (or their representatives) may inspect the Products ordered under a purchase order during any stage of their manufacture, construction, preparation, delivery and completion. We may reject any Products for nonconformities revealed by any such inspection, analysis or subsequent manufacturing operations even though we may have previously accepted such Products.

6.02 Notice of Nonconformity. If any Products are nonconforming we will inform you orally or in writing about the nonconformity as soon as reasonably practicable after we have discovered it.

6.03 Right to Cure. If the Products are parts, goods or materials, you will be permitted to re-work, replace or otherwise remedy a nonconformity in the Products as long as: (a) the nonconformity has been discovered after delivery of the Products but before we have started to use them, (b) the remedial work will not cause any delay in our operations, including the production process, or cause us to incur any additional costs, and (c) the cure can be completed by the deadline we establish. If the Products are in the form of services, at our option we may permit you to re-perform the services, or we may have the services performed by a third party or perform the services ourselves, in each case at your expense.

6.04 Our Options. If we determine in good faith that the remedial work cannot be done within the limits of Section 6.03, we are entitled to: (a) reject the nonconforming Products, return them to you and, at our option, request redelivery of conforming Products, or (b) retain them and either repair them ourselves or request you to do so, on or off-site. In any event, you will bear the risk and expense of the remedial action undertaken by either you or us.

6.05 Costs Incurred by Us. You will be liable for all direct, incidental and consequential and other damages, losses, costs, and expenses we incur resulting from your failure to deliver conforming Products or to comply with the shipping and delivery or our other requirements, even if you have cured such failure.

6.06 Payment for Nonconforming Products. Payment for nonconforming Products will not constitute acceptance of them nor will it limit or affect any of our rights.

7. Warranties.

7.01 General Warranty. In addition to any warranties that you may have provided with the Products, you warrant that the Products will (a) be new and free from defects in material and workmanship, fully merchantable and of good quality, (b) be in conformity with any specifications, drawings, samples or descriptions that may have been furnished by either party and approved by us, and (c) comply with all applicable laws of the countries in which the Products have been manufactured or assembled or are to be used. You also warrant that you are and will be in compliance with the requirements of our Supplier Quality Manual Revision A as set forth at <http://www.tubefab.org/Supplier%20QUALITY%20MANUAL%20REV%20A%2012-1-10.pdf>.

7.02 Service Warranty. You warrant that any services furnished will be performed in a workmanlike and timely manner, by persons with the necessary skill and expertise, and will conform to any specifications as well as the highest industry standards.

7.03 Intellectual Property Warranty. You warrant that the sale and use of the Products supplied by you pursuant to any order will not infringe or violate any United States or foreign patent, trade secret, trademark, service mark or copyright (i) if the Products are primarily of your design or specification, or (ii) we follow your recommendations for use of the Products.

7.04 Additional Warranties. You further warrant that (a) you know of our intended use and expressly warrant that all Products covered by any purchase order will be fit and sufficient for the particular purposes we intend, (b) the Products will be free from defects in design to the extent furnished by or through you, even if the design has been approved by us, (c) you have good title to all Products, free and clear of all liens and encumbrances, and you will transfer such title to us, and (d) the Products will be in conformity with all other representations or warranties made by you or the manufacturer. Upon our request, where applicable, you will provide a complete waiver and release of all liens relating to the Products covering all labor and materials for which a lien could be filed.

7.05 Survival of Warranties. Your warranties will survive any inspection, delivery, acceptance, or payment by us. Acceptance of all or any part of the Products will not be deemed to be a waiver of our right to cancel or return all or any part of the Products or reject any services due to their failure to conform at delivery or upon later discovery.

7.06 Warranty Period. For Products installed or used in our products, the warranty period begins on the date the Products to be incorporated into the product are delivered to us (or a third party designated by us) and expires on the date on which the period of the warranty provided by us to our customer for such product ends (but no sooner than one year after delivery), and (ii) for other Products, the longer of (i) the length of your standard warranty period or (ii) one year.

7.07 Recalls. In the event that we or our customer voluntarily decide, or other federal, state or local agency ("Government Agency") issues an order that requires us or our customer to recall, replace, repair or make refunds with respect to all or part of our products which incorporate the Products (a "Recall"), you will cooperate with us and assist in any such Recall as and when we request. If Products are the subject of a Recall, whether initiated by us, you or a Government Agency (including the issuance of safety notices), you will be responsible for all matters and costs associated with the Recall, including but not limited to, all expenses and losses we incur in connection with such Recall (and, where applicable, any products with which the recalled Products have been packaged, consolidated or commingled), including but not limited to refunds and other payments to customers, transportation costs, and initial contact and reporting of the Recall to any Government Agency having jurisdiction over the affected Products.

8. Compliance with Laws.

8.01 Compliance with Applicable Law. In connection with the manufacturing of Products or the furnishing of services included with the Products, you will comply with all regulations and provisions of the country of origin, the Fair Labor Standards Act of 1938, as amended, all Occupational Health and Safety Act regulations, and any other applicable foreign, federal, state, or local law or regulation in any way affecting the provision, manufacture, assembly, labeling, purchase, importation, transportation, use or sale of Products in connection with our order.

8.02 Hazardous Materials. All hazardous materials supplied by you must comply with all applicable government regulations, and you will provide appropriate Material Safety Data Sheets prior to the first shipment of Products to us. Upon our request, you will provide us with access to and copies of any data, materials or other information that relate to the Products, their composition or any component or any materials or substances used in the Products or in connection with their production. You will notify us of any inherent hazard related to any material incorporated in the Products that would expose anyone to hazard during handling, transportation, storage, use, resale, disposal or scrap.

8.03 Data Security. You agree and represent that you maintain information protection practices and procedures that comply with industry best practice and applicable data security laws. You will take all appropriate and required legal, organizational, and technical measures to protect any personal data to which you are given access and use it only as required by the purchase order.

9. Disclosure/Use of Information.

9.01 Our Intellectual Property. All specifications, drawings, notes, instructions, engineering notices, technical data, and equipment referred to in our purchase order or supplied by either of us in connection with our purchase order are incorporated into our purchase order by reference. You agree that this, together with all information we disclose to you or to which you have access, is our confidential and proprietary information, and you will not reproduce, extract, use, or disclose it to others without our prior specific written consent. You will supply all specifications relating to materials incorporated into the Products at our request.

9.02 Your Obligations. You will also take reasonable steps to safeguard our confidential and proprietary information from unauthorized access and disclosure. Any information, writings or inventions derived by you or your agents from our information are hereby assigned to us by you, and you warrant that you have the right to do so.

9.03 Return of Intellectual Property. Upon demand by us or upon completion by you of your obligations under any purchase order, you will return to us all confidential and proprietary information provided by or us or on our behalf and you will not retain any copies, summaries or extracts of all or part of the information.

9.04 Disclosure of Your Intellectual Property. Any information that you disclose to us with respect to the services to be rendered or the design, manufacture, sale, or use of the Products will be deemed to have been disclosed as part of the consideration for this order, and you will not assert any claim against us (or our customer) by reason of our use of such information you disclose except to the extent expressly covered by a separate license agreement signed by us or a valid patent disclosed to us prior to our order being issued. Without our express written consent, you will not disclose to any third party or permit any third party to use any Specialty Tooling as defined in Section 11 below,

samples, over-runs, rejected parts or scrap produced or used by you in connection with this order (collectively, the "Remaining Product"), all of which you agree will be considered confidential. To the extent we are required by contract to provide access to or use of your intellectual property to our customers, you agree to such access and/or use.

9.05 Return of Intellectual Property. Upon completion of an order (unless we have submitted or indicated an intention to submit other orders to you for the same Products) or termination of the relationship, or at any time upon our request, you will (i) provide us with at least thirty (30) days' prior written notice of your intent to destroy any remaining Product, (ii) destroy all remaining Product unless otherwise directed by us and to the extent directed by us, and (iii) provide us with a certificate of destruction executed by one of your officers, which certificate will specifically describe the quantity and nature of each product destroyed and the manner of destruction.

9.06 Our Design. If the Products specified in a purchase order are peculiar to our design either as an assembly or a component part of an assembly, or they bear our trademark or other identifying mark, they will not bear your trademark or other designation, and similar material will not be sold or disposed of to anyone other than us.

9.07 Separate Confidentiality Agreement. We may have or may in the future enter into a separate agreement with you relating to confidentiality or non-disclosure. The provisions of any such agreement requiring you to maintain the confidentiality of our (or our customers') confidential information will be in addition to those contained in this Section 9, and in the event of any conflict, the provisions that afford the greatest protection for such confidential or proprietary information will prevail.

10. Excuse of Performance.

10.01 Excusable Events. Except with respect to an obligation to pay money, neither of us will be liable for a delay or inability to perform directly due to an excusable event. The following events will be excusable events: acts of terrorism, war, riots, insurrection, civil commotion, fire, flood, earthquakes, storm, and embargo; provided that excusable events do not include delays or nonperformance of your subcontractor or supplier whether or not their inability to perform is caused by an excusable event as set forth in this Section 10.01. Excusable events do not include shutdowns for equipment maintenance, equipment breakdown, or the inability to acquire raw materials, energy, parts, or any other item required to manufacture or provide the Products at the prices prevailing before the occurrence of the excusable event.

10.02 Notice. The party claiming an excusable event will provide the other party with written notice of both its occurrence and its termination as soon as practicable.

10.03 Our Options. In the event of an excusable event, we may, at our option, acquire all finished Products, work-in-process, and raw materials produced or acquired for the Products under a purchase order. We will also have the option to cancel the affected purchase order in whole or in part or delay the delivery of any Products covered by such order without liability.

10.04 Other Remedies. Our customers may have the right to recover certain amounts from us, even though your non-performance is otherwise excused by an excusable event, such as any additional amounts necessary to buy substitute Products. Notwithstanding Section 10.01 above, you will be responsible for any such amounts we are required to pay arising out of your experiencing an excusable event.

11. Our Tooling and Property.

11.01 General. This Section governs our tooling and all other property owned by us and our affiliates. Tooling includes all tools with accessions, modifications and repairs, equipment, drawings, manufacturing aids and replacements of the foregoing furnished by us, either directly or indirectly, or acquired or manufactured by you for use in the performance of a purchase order ("Specialty Tooling"). You will be responsible for any loss or damage that occurs for any reason to Specialty Tooling under your control or in your possession, excluding normal wear and tear.

11.02 Specialty Tooling and Bailed Property. Unless otherwise provided in an order, Specialty Tooling and any other property owned by or paid for by us that is placed in your possession or control for your use in connection with the Products ("Bailed Property") will be (i) our property, (ii) plainly marked or otherwise adequately identified by you as our property, (iii) safely stored separate and apart from your property, and (iv) maintained in such a manner to prevent its unauthorized access or disclosure. You will use Specialty Tooling or Bailed Property solely in connection with the production of Products.

11.03 Acquisition of Specialty Tooling. You will design and fabricate or otherwise acquire Specialty Tooling that fully conforms to the specifications and other requirements of our purchase order. Specialty Tooling must be capable of producing any volume projections for the Products for the life of the part. Your warranty for Specialty Tooling is the same as for the Products, but the length of such warranty shall be extended as necessary to allow functionality to produce the highest number of parts estimated.

11.04 Ownership of Specialty Tooling. We will become the sole owner of all Specialty Tooling as soon as it is fabricated or acquired by you, even if you have not yet been paid for it. In any dispute involving ownership of the Specialty Tooling at any other stage of its completion, there is a presumption that we are the sole owner of the Specialty Tooling. As a precaution against any adverse claims, you grant us a security interest in the Specialty Tooling to secure any progress payments advanced against the Specialty Tooling and a right to title and possession of the Specialty Tooling. We may file a financing statement showing you as the debtor/bailee and us as the secured party/bailor with respect to any Specialty Tooling.

11.05 No Rights or Liens. Specialty Tooling and Bailed Property are in your possession or control as a bailment from us. You acknowledge that you are a bailee at will of Specialty Tooling and Bailed Property. You have no property interest or other rights in Specialty Tooling or Bailed Property nor any power to transfer any rights or grant a security interest in either of them to a third party. To the fullest extent permitted by law, you waive any and all rights you may have to claim a lien or encumbrance of any kind whatsoever with respect to Specialty Tooling and Bailed Property. Upon your failure to deliver the Specialty Tooling or Bailed Property at our request, we will be entitled to, and you agree to allow us entry onto your premises to retrieve the Specialty Tooling or Bailed Property. You also agree to waive any requirement that we post bond, and you will not oppose our request for any equitable relief that may be available to us to obtain immediate possession of the Specialty Tooling or Bailed Property.

11.06 Possession of Specialty Tooling and Bailed Property. You will keep Specialty Tooling and Bailed Property in your possession and control in good condition, fully covered by insurance, free of liens and encumbrances, and will replace them when lost, damaged or destroyed. If part of the fabrication, modification, repair or refurbishment of the Specialty Tooling or Bailed Property requires you to transfer possession to a third-party, you will inform us in advance in writing with the identity of the third-party contractor and the location of the Specialty Tooling or Bailed Property and obtain our prior written permission.

11.07 Return of Specialty Tooling or Bailed Property. All Specialty Tooling and Bailed Property will be immediately transferred as we may direct at any time. If you make any unauthorized transfer of Specialty Tooling or Bailed Property, or you or your suppliers or subcontractors fail to deliver possession to us upon demand, you will reimburse us for any costs we incur in having the Specialty Tooling or Bailed Property returned to us or moving it as directed by us. You will cooperate with us in removing the Specialty Tooling from the location of any third party.

11.08 Third Party Claims. You will defend and indemnify us for all costs incurred, including reasonable attorneys' fees, in connection with any claim that challenges our sole right, title and interest in Specialty Tooling or Bailed Property (or that of our customer) brought by any third party claiming any right or interest in the Specialty Tooling or Bailed Property through you.

11.09 Tooling Costs. The price of Specialty Tooling will not exceed the actual costs of acquiring the Specialty Tooling from a third-party contractor or your actual costs of fabrication of the Specialty Tooling. You will adhere to our procedures in effect at the time for submitting requests for reimbursement for Specialty Tooling costs. All requests for reimbursement for Specialty Tooling costs are subject to our validation, review, approval and audit. If pre-production validation is required by our customer prior to payment, we will promptly pay you after we receive payment for the same from our customer.

12. Termination for Cause.

12.01 Breach. We reserve the right to cancel all or any part of a purchase order, without liability, if you: (a) repudiate or breach any of the terms of such order, including your warranties, (b) fail to perform as specified by us, or (c) fail to make progress so as to endanger timely and proper delivery of Products, and, if capable of cure on a timely basis, do not correct such failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from us specifying such failure or breach.

12.02 Change of Control. We may terminate a purchase order, in whole or in part, upon written notice to you if you experience a change of control or a sale of a substantial portion of your assets.

12.03 Insolvency. If you become insolvent or if a petition under any chapter of the bankruptcy law is filed by or against you or if you make a general assignment for the benefit of creditors or if a receiver is appointed for you, we may terminate any purchase order and take possession of the Products in whatever stage of completion they may be, immediately obtain custody of all proprietary and confidential information and all Specialty Tooling or Bailed Property, and contract with or employ any other person or persons to finish the Products and collect from you any additional expenses or damages that we may incur. In each case, you will be liable for all costs incurred by us, including those for attorneys and other professionals.

12.04 Option to Terminate Due to Excusable Event. We may terminate a purchase order in whole or in part due to an excusable event upon written notice to you as described in Section 10.03. In the event of an excusable event, we may, at our option, acquire all finished Products, work-in-process, and raw materials produced or acquired for the Products under a purchase order.

12.05 Effective Date of Termination. Termination under this Section will be effective on the date of our written notice of termination unless the written notice specifies another date.

12.06 Amounts Payable by Us upon Termination. In the event of a termination under this Section, we will pay you, subject to Section 12.07, for any unpaid Products (including Specialty Tooling) previously delivered and accepted that fully conform to the requirements of the purchase order, and undelivered finished Products we choose to purchase in our sole discretion. We may also, at our option, acquire all work-in-process at a price reflecting its percentage of completion and raw materials produced or acquired for the Products under a purchase order.

12.07 Amounts Payable by You. You will be liable for all direct, incidental, and consequential and other losses, costs and expenses incurred by us resulting from your failure to comply with any of the requirements of a purchase order (even if you have subsequently cured such failure) or from our termination under this Section 12. Termination under this Section or payment by us of amounts set forth above do not relieve you of this liability.

13. Termination at Our Option.

13.01 Termination. In addition to any other rights we have to cancel or terminate any purchase order, we may at our option immediately terminate all or any part of a purchase order, at any time and with or without any reason, by giving you written notice. Because of the commitments we have to our customers, you may not terminate a purchase order except for non-payment of undisputed invoices which are still unpaid thirty days after you give us written notice of the same.

13.02 Effective Date. Termination under this Section 13 will be effective on the date of our written notice unless the written notice specifies another date.

13.03 Amounts Payable to You. Upon such termination, we will pay you the following amounts without duplication: (a) the order price for all Products that have been completed in accordance with a purchase order and not previously paid for; and (b) the actual cost of work-in-process, parts and materials incurred by you in furnishing the Products to the extent such costs are reasonable in amount and are properly allocable or capable or being apportioned under generally accepted accounting principles to the terminated portion of such order; less, however, the reasonable value or cost (whichever is higher) of any Products, parts or materials usable or salable by you with our written consent, and the cost of any nonconforming, damaged or destroyed Products, parts or material. If cancellation arises out of the cancellation of our agreement with our customer, your cancellation claim will be paid in the amount approved by such customer promptly after we receive payment of our cancellation claim.

13.04 Limitation on Costs. We will make no payments for finished Products, work-in-process or raw materials fabricated or procured by you in amounts in excess of those authorized by current purchase orders or releases nor for any undelivered Products that are in your standard stock or that are readily marketable. Payments made under this Section will not exceed the aggregate price we would have paid for finished Products that would be produced by you under delivery schedules or releases outstanding at the date of termination.

13.05 No Other Liability. Except as provided in this Section, we will not be liable for, and will not be required to make payments to you, directly or on account of claims by your subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of any order.

13.06 Submission of Claim. You will furnish us, within ten (10) days after the effective date of any termination under this Section 13 or such shorter period as our customer may require, your termination claim, which will consist only of the items set forth in this Section. Your claim must include sufficient supporting data to permit us to verify and substantiate the claim. We (or our customer) may audit your records, before or subsequent to payment, to verify amounts requested in your termination claim. If an audit determines that we have overpaid you, you will immediately refund the amount of the overpayment to us.

14. Your Obligations on Termination.

14.01 Your Obligations. Upon expiration or termination of a purchase order, you will (a) take all actions necessary to protect or transfer possession of any Specialty Tooling or Bailed Property in your possession or in the possession of your suppliers or subcontractors, (b)

cooperate with us to help avoid production disruptions, (c) terminate all orders and subcontracts related to the Products, and (d) cease all work under the purchase order unless we otherwise direct.

15. Indemnification.

15.01 Your Indemnification Obligation. To the fullest extent permitted by law, you will indemnify, defend, and hold us and our affiliates, directors, officers, employees, and agents (collectively, the "Indemnified Persons") harmless against and from any and all claims, lawsuits, judgments, losses, product recalls, civil penalties or actions, costs, liabilities, damages, and expenses (including attorneys' fees) incurred or to be incurred (collectively, "Claims") which may be made or brought against us to the extent it is alleged that the Products or the use of the Products caused or will cause: (a) the death of or injury to any person or damage to any property which resulted or is alleged to have resulted from any acts or omissions by you, your employees and agents, or from the Products or their use, except to the extent that we are the sole proximate cause of the occurrence complained of; (b) your or the Products' failure or alleged failure to comply with any of your warranties or representations contained in these Terms or otherwise; and (c) subject to Section 15.05 below, infringement of any patent, design, trade name, trademark, copyright, trade secret, or any other right or entitlement of any third party in relation to the Products.

15.02 Right to Defend. If you should fail to assume your obligations hereunder within 14 days of your receipt of our notice of such Claim, including your obligation to diligently pursue and pay for the defense of any indemnified Claim within such time, we will have the right, but not the obligation, to proceed on our own behalf to defend ourselves and to thereafter require from you reimbursement and indemnification for any and all reasonable costs and expenses (including reasonable attorneys' fees).

15.03 Notice. You will provide us with written notice within 14 days of the receipt of any evidence that an alleged independent act by us may have been the sole proximate cause of the Claim. We will give you reasonable prior notice of such Claim and permit you to control the defense of the Claim. Notwithstanding the above, we will have the right, but not the obligation, to participate as we deem necessary in the handling, adjustment, or defense of any such Claim, at our own expense. We will each cooperate with the other in the handling, adjustment, or defense of any such Claim.

15.04 Settlement. Notwithstanding Sections 15.02 and 15.03, neither of us will enter into any settlement or compromise of the claim for the benefit of the other without the express written consent of the other, which will not be unreasonably refused.

15.05 Infringement Claims. We will not consider you in breach of Section 15.01(c) if you: (a) procure the right to continue to manufacture and sell the Products free of any liability for infringement or violation; or (b) replace or modify the Product, at your sole expense, with non-infringing Products of equivalent or improved functionality; and (c) in either case, pay any associated damages.

15.06 Work Performed on Premises. If you perform work on our premises or utilize our property, whether on or off our premises, to the fullest extent permitted by law, you will indemnify and hold the Indemnified Person harmless from and against any Claims for damages to the property of or injuries (including death) to Indemnified Persons, their employees, your employees or any other person arising from or in connection with your performance of the work or use of the Indemnified Person's property, irrespective of whether we may have been negligent as well.

15.07 Insurance. You (and your subcontractors) will comply with our insurance requirements and provide us with evidence of your compliance.

16. Service Parts. We may have an obligation to supply service parts to a customer long after the termination of our agreement with it. Accordingly, you will provide (and will require your subcontractors to provide), for a period of ten years after delivery of the last Product purchased under an order, Products to satisfy our obligations for service and replacement parts at the following prices, as applicable: (i) at the last production price, if that is the price our customer is paying for our parts that incorporate your Products, or (ii) the prices arrived at by applying the customer's payment formula to the Products, or (iii) at quoted prices, should we request a quote.

17. Setoff.

17.01 Direct Setoff Rights. In addition to any right of setoff provided by law, all amounts due to you will be considered net of any indebtedness (whether arising out of one or several orders) of you and your subsidiaries and affiliates to us. We may deduct such amounts without any other prior notice.

17.02 Basis. We will be presumed to have acted in good faith if we have a commercially reasonable basis for believing that you or one of your subsidiaries or affiliates is liable for the amount of the debit. A debit may include professional fees and other costs.

18. Remedies.

18.01 Our Rights. The rights and remedies reserved by us in these Terms will be cumulative and in addition to any other rights or remedies provided by law or equity. Our liability to you arising out of or in connection with a purchase order, regardless of the form of the cause of action, will in no event include penalties of any kind or description, or incidental, consequential, special, punitive, indirect or other similar damages, whether foreseeable or not, based on your claims or claims of any party claiming by or through you. Any claim for relief against us must be commenced within one year after the cause of action accrues.

18.02 Waiver. Our waiver of any such right or remedy will not affect any right or remedy subsequently arising under the same or similar clauses. Such a waiver will not operate as a waiver of such clause or condition. A waiver of nonperformance under a purchase order must be in writing and will apply only to the specific instance addressed in the waiver and to no other past or future nonperformance.

18.03 Costs. We will be entitled to recover costs and reasonable attorneys and other professional fees in the enforcement or defense of any rights under a purchase order.

18.04 Your Attempted Limitation of Liability. Any attempt by you to (a) disclaim any theory or grounds upon which we or our customers might recover against you, (b) disclaim any kind or class of damages which we or our customers might recover against you, or (c) establish contract time limitations periods within which we or our customers are obligated to assert claims against you, are rejected by us and will not be effective.

19. Assignments.

19.01 Assignment by Us. We may assign any benefit or obligation under any purchase order upon written notice to you.

19.02 Assignment by You. Any purchase order we issue to you is in reliance upon your personal performance of the obligations imposed. You agree not to assign a purchase order or delegate the performance of your obligations without our specific written consent. Any such assignment or delegation without our previous written consent, at our option, will be deemed a cancellation of the purchase order. Any consent to an assignment that we may give will not be deemed to waive our right to recover from you and your assigns for any claim arising out of a purchase order.

20. Continuing Obligations; Severability.

20.1 Continuing Obligations. The obligations of each party under the following Sections will survive the expiration, non-renewal or termination of a purchase order: Sections 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 or 22.

20.2 Severability. Any term or condition that is declared unlawful or unenforceable by a court of competent jurisdiction will not apply. The unenforceability of any such term or condition will not affect the enforceability of any other term or condition.

21. No Third Party Rights; Advertising.

21.01 No Third-Party Rights. No term, condition or right in or arising under any of the Terms or otherwise relating to the purchase of the Products gives or creates any third-party beneficiary rights or any other rights whether in law or equity to any person or entity other than you and us.

21.02 Advertisement. You will not, without first obtaining our specific written consent, in any manner advertise, publish, or disclose to any third party that you have contracted with us to furnish the Products covered by a purchase order except as specified or required for completion of an order. Your breach of this Section will permit us to cancel the order in addition to any other rights and remedies we may have as provided by law.

22. Governing Law; Entire Agreement.

22.01 Michigan Law. This purchase order will be construed and interpreted according to the laws of the State of Michigan, without regard to the laws regarding conflicts of laws. The United Nations Convention on Contracts for the International Sale of Products will not apply to these Terms.

22.02 Arbitration. At our option, which will be exercised by written notice any time before or within 30 days following the service of process in a legal action, any dispute regarding the Products or the order or any of these Terms, or any other matter between the parties (other than requests for injunctive relief), will be resolved by binding arbitration using a single arbitrator selected by the parties. The arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) and under Rules 26 through 37 of the

U.S. Federal Rules of Civil Procedure, in Cheboygan County, Michigan. If the parties cannot agree on an arbitrator within 30 days, each party will select a person from the AAA-approved commercial arbitrator list and those two people will jointly select a third person from such list who will conduct the arbitration as the sole arbitrator. The arbitrator will issue written findings of fact and conclusions of law, and may award attorneys' fees and costs to the substantially prevailing party. In no event will any party be awarded punitive or exemplary damages. The award of the arbitrator will be enforceable in any court of competent jurisdiction. We may bring any request for injunctive relief in any court(s) having jurisdiction over you.

22.03 Entire Agreement; Modifications. Our purchase order, together with these Terms, constitutes the entire agreement between you and us with respect to the matters contained in our order. The order may only be modified by a written amendment executed by one of our officers or, for changes, by our issuance of a purchase order amendment.